

GOVERNMENTAL RESEARCH BUREAU • 1957

MICHIGAN STATE UNIVERSITY • E. LANSING

THE
MICHIGAN
TOWNSHIP
BOARD

ITS POWERS AND DUTIES

352.0774 B614m

By James and Marilyn Blawie

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Acknowledgment

A manual like this can never be the product of one man or of two. It must of necessity be a blend of legal materials, of the common-sense experience of dozens of people active in township affairs, and of the knowledge of persons who have studied the theory and history of local government and its operation.

The authors' job would have been impossible without the assistance of many people whose names they do not even know. Our thanks are due to the persons who made up reports, digests, and annotated statutes which form the source material of this book, and to those who made helpful comments which were passed on to us anonymously. In personal interviews many men and women of good will gave up hours of their time to answer our questions, and many others assisted by reading and commenting on the draft of this book. It is difficult to single out a few names from among those who helped us, but we remember particularly Charles Larnard, Chairman, Board of Directors, Michigan State Association of Supervisors; David Hansen, Supervisor, Kent County; Edward McNamara, Supervisor, Saginaw County; Mrs. Belle McMillen, Township Clerk, Ingham County; L. A. Hart, Township Trustee, Shiawassee County; Sid Dunkerly, Township Clerk, Saginaw County; Carl Anschutz, President, Michigan State Association of Supervisors and Supervisor, Bay County; James Folks, Supervisor, Jackson, and Mabel Frost, Township Clerk, Muskegon County.

Above all, the job could not have been accomplished without the constant efforts of William Dennison of the Michigan State Association of Supervisors and D. Hale Brake of the Michigan Institute of Local Government, without the encouragement of Professors Norton E. Long and Leroy Ferguson of the Michigan State University Political Science Department, to whom this book is dedicated, and without the assistance of Professor Frank Pinner, Dr. Henry Merry and of the other members of Michigan State's Political Science Department and Governmental Research Bureau, who did so much to suggest ways and means and to offer helpful comments.

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CHAPTER 1

Introduction

The Township in History and Tradition

The American township occupies a unique position in the history of the world. In its sources, the township was virtually a tiny republic, taking care of its own needs, and bound to the state only by the tenuous bonds of consent and mutual assistance. The Michigan township is the direct heir of the New England township, and was created by the Northwest Ordinance of President Thomas Jefferson, who desired to preserve the rugged direct democracy and self-sufficiency of the New England town in the settling of the midwest. The New England town had proved itself able to meet the exigencies of frontier life in a savage environment where communications were tenuous or non-existent. It was self-sufficient, needing little outside help, and it was one of the few examples which the world had ever seen of direct democracy, in which each man had the right to speak openly at meeting and know that his opinion would be considered. It was also a human-sized unit of government, in which a man might know all his neighbors, come to respect others, and be respected in turn.

Such was the heritage of the township, and such was the pattern which Thomas Jefferson chose above all others for the settling of the region between the Ohio and the Mississippi. Subsequent events have shown this form of local government to be admirably suited to the geography, climate, and economic life of the area, and to the temperament of the people. Almost two centuries later, with all the advances in the study of government, of society and of history, we can devise no plan which would have been better adapted to the settlement of this vast region.

Modern Position of the Township

In our own time, the township has become an essential component unit of county and state government. There were, in the last century, contentions to the contrary, such as the arguments of the great justice, Thomas M. Cooley, that the township is endowed with a certain element of local sovereignty.¹ However, these principles have never come to be law. The needs of civilization in this century have removed from the orbit of township officials any possibility of action based upon any notion of an inherent right of local self-government. In our day, the township may not act unless it is permitted to do so by the constitution or statutes of Michigan, or by an interpretation of the common law by the Supreme Court of Michigan.

The Need for a Handbook for Board Members; Necessity of Going to the Statutes and Cases

It has been difficult in the past for the non-lawyer member of the township board to figure out just what he and his fellow board members could do and could not do in the performance of their offices. Even with the best of good will, it has sometimes been the case that town officials have acted beyond their powers, causing themselves and their townships embarrassment, litigation, and even considerable financial loss. In some instances, board members have even been required to pay for the consequences of their mistaken actions from their own pockets.

It is the purpose of this manual to provide a reliable guide to the town board member so that he may avoid embarrassment or difficulty. New board members, heretofore unacquainted with the operations of township government, may also find some considerable benefit in leafing through these pages so that they may form a rough notion of the nature of their duties. This manual is not exhaustive. It is intended to be a handbook to speed the affairs of the board meeting and to indicate the broad areas within which action is possible. By all means, and this can not be repeated too often, go to the statute, or the case, or the opinion of the attorney general if you plan to take action in a certain area. No guidebook is a good substitute for the direct word of an authoritative body or official.

Great efforts have been made to assure the correctness of the information here presented, but error is inevitable on some point or other in a manual such as this. This book has been copiously footnoted for the convenience of the user, and it should take only a few minutes to check on any point where this is necessary or desirable. Certainly this should be done before the final passage of any ordinance or resolution which is intended to have any permanent effect. The guide to parliamentary procedure, which forms the last chapter, should also be consulted by the new member early in his career.

Statutory Interpretation; A Warning

In reading a statute or this manual, one should always bear in mind the difference in meaning and legal effect between "must" (mandatory), "shall" (mandatory or directive), and "may" (permissive or discretionary). Use of the mandatory word "must" or "shall" means that the board has no choice but to do exactly what the statute says. When "shall" is used in its rather infrequent directory sense, it means that a thing ought to be done but if it is not done, some slight penalty may be assessed against the parties to the action although the action itself is not void or illegal. The discretionary or permissive "may" leaves it up to the persons named to decide whether the thing will be done. Where a public official or body is given discretion, use of the discretion may be inquired into in a court proceed-

ing; but if full consideration has been given to the matter and action taken on the basis of the evidence and without undue prejudice, courts will not interfere or substitute their judgment for that of the persons exercising such discretionary power.

Footnotes

1. *People v. Hurlbut*, 1871, 24 M. 44, at 105.

CHAPTER 2

Election of the Board, Organization, Vacancies, and Conflict of Interest

Composition of the Township Board; Quorum

The township board is made up of the supervisor, treasurer, clerk, and two trustees in most of the towns of the state.¹ Those townships with a population of five thousand or more, or with three thousand or more registered voters may elect to be governed by a larger board, consisting of those officers named plus two more trustees. In the first case, the quorum for doing business is three members, and in the second four. The town clerk is automatically the clerk of the board. The electors may choose to change to this second, larger board by a majority vote at the annual township meeting.² Once the voters have chosen to be governed by this type of board, they cannot rescind their action.³

Qualifications of Members; Term of Office

Any person who is qualified as an elector of the township may hold any township office, whether he holds property or not.⁴ The term of township officers is two years, except that members of the board of review and justices of the peace are elected for four years. In two-trustee towns, one trustee is elected every two years for a four-year term; in four-trustee towns, two are elected every two years for four-year terms.⁵ If by some chance elections are not held, the previous officers hold over until the next regular election.⁶ If convenient, the township board may provide polling places within a city incorporated from the township.⁷

Nomination

Nomination of candidates may be either by caucus or primary. The caucus is the older system, still used in most townships. Under Public Acts 191, 1957, caucuses may be held on the third Monday in February preceding the biennial spring election or on the Saturday before the third Monday in February, at the call of the party chairmen, but at an hour fixed by the township board. If the electors wish to switch over from the caucus to the primary system, they may initiate action by filing a petition of 10 percent of the electors. The township board must then refer the matter to the voters, and if approved, the township thenceforward nominates candidates by the direct primary.⁸ The primary system may also be adopted by a resolution of two-thirds of the members-elect of the town-

ship board.⁹ Once adopted, the system may only be discontinued through a referendum, with the action initiated by a petition of 10 percent of the electors.¹⁰ Where nomination is by primary, the township board must issue public notice that the primary is to be held forty days before the date of the primary (the third Monday in February preceding the biennial spring election). Such primary must be brought to public attention by adequate publicity.¹¹

Township Elections; Date; Straight-Ticket Votes

Under statute, township elections are held the first Monday in April in each odd-numbered year at the same time and place as the biennial spring election of state officials.¹² Under this act also, a "straight-ticket" vote cast for state offices also applies to township offices.¹³

Incompatible Offices

There are certain offices considered incompatible with the office of township board member, so that a person who holds one of these offices may not be a candidate for the township board. It is not possible to detail all of these conflicting offices, but the following officers are among those who may not also be members of the board: overseer of highways, highway commissioner, justice of the peace, member of the township planning board. School district and township offices are not usually incompatible, though the following are: township treasurer and school district treasurer, township treasurer and member of the school board, town clerk and member of the school board, supervisor and member of the school board. In addition, the supervisor may not be a member of the board of jury commission. Most town offices are not incompatible with other local government offices, and from the examples given above, it may be seen that the rough line of distinction is based upon the idea that a full-time township officer should not hold any other job that may lead to conflicting duties or conflict of interests or loyalties, or take a good deal of time.

There are exceptions, though, since the attorney-general has held that the supervisor may also hold the office of village president or school district treasurer, and that the clerk may be a member of the board of review.¹⁴ The justice of the peace is now barred from holding other township offices. The tendency in the past few years has been for the attorney-general to rule more and more strongly against multiple job-holding. This trend has the approval of most authorities on local government. The best guide for a person in doubt as to his status is a reading of the opinions of the attorneys general cited in the footnote, and if the conflict is still not resolved, then he should write a concise letter to the attorney-general asking for a ruling on his problem. The letter should be written before the person offers himself for election, appointment, or nomination.

Recounts; Canvassing of Votes; Oath of Office

A recount of votes may be had by a person, including a candidate aggrieved at the conduct of an election,¹⁵ where he takes the proper action as provided by the statute. Otherwise, the township board of canvassers declares within forty-eight hours the election of the successful candidates, and certifies and delivers the records to the township clerk.¹⁶ The persons so elected to the board must take the oath of office within ten days after notice of election, and subscribe the oath at the town clerk's office. Those officers required to file bond must do so within the same time period, or forfeit an extra ten dollars for failure to do so.¹⁷

Vacancies on Board

Vacancies may occur in the town board, caused by death, resignation, removal for cause, removal from the township, conviction of an infamous crime, violating the oath of office, decision by court or administrative tribunal declaring the member's election or appointment void, habitual drunkenness, refusal or neglect to take and subscribe the oath, and neglect or refusal to give required bond.¹⁸ Resignation by a member must be a written notice, addressed to the township board and delivered to and filed by the clerk.¹⁹ Such a resignation is complete only when accepted formally by the township board, or when a successor is appointed.²⁰ The governor of the state may remove a board member for cause, such as dishonesty, incompetency in office or fits of mental disturbance.²¹ The governor must present due written and sworn evidence, and must notify the board member before he makes his decision and give him a chance to be heard. The courts will not look into the governor's action as long as he had some evidence upon which to base his removal decision.²² After such removal, the member may not hold any other public office for three years. Where a board member is convicted of a crime punishable by imprisonment in the state's prison or in a federal penitentiary, he loses his board office. However, proper proceedings must be taken to remove him from office.²³

Certain Officers to Be Bonded; Temporary Absences

Bonds and sureties must be provided by the clerk in such amount as the board thinks proper,²⁴ and the treasurer must fulfill state requirements of bonding as prescribed by statute. Until they do so, these officers may not perform any of the duties of office. In the case of temporary absence of the treasurer, it is established that his deputy cannot sit on the township board in his place.²⁵ It seems that the deputy clerk is also unable to sit as a board member, except to take care of certain routine matters.²⁶

Temporary Appointments

Where a quorum is left on the board, it may proceed to fill vacancies by temporary appointment. The persons so appointed hold office for the rest of the unexpired term, and take the oath, file notice of acceptance, and so on, just as if elected.²⁷ The board also appoints a person to complete the term of a justice of the peace office which has become vacant. A new justice must be elected at the next biennial election for the remainder of the term.²⁸ The board may appoint a temporary treasurer also in similar fashion to take care of the treasurer's office,²⁹ and a supervisor for the remainder of the term of his predecessor.³⁰ Both of these officers must take all necessary oaths and observe other formalities, as if elected. The person so replaced must have either resigned, or be incapable of executing his duty, and mere substitutions for convenience are not allowed.³¹

Problems Created by Incorporation or Lack of Quorum

Special problems may arise where part of the township is organized into a city, automatically disqualifying board members who reside within the newly created city, or where a quorum of members does not exist due to several closely spaced vacancies in the board membership. In the first case, the board of supervisors is empowered to call a special election,³² and if convenient, such election may be held at the same time as the township primary election.³³ If the board deems it expedient or orders it, where a quorum of the members is left, a special township meeting may be called to fill the vacancies. If the board is disorganized or reduced below a quorum, a special township meeting may be held as in newly organized townships.³⁴

Bonding and Sureties; New Members; Supervisor Agent for Township

Where a township officer has had his bond approved without justification of his sureties, and has entered upon performance of the duties of his office, he cannot be removed from office by having the office declared vacant because he did not satisfy the bonding and surety requirements, unless he has been given notice and an opportunity to file a new bond or provide other surety.³⁵ Under certain circumstances, the board may hold a business meeting before the qualification of newly elected members.³⁶ Although the board is the legislative body of the township and is charged with a great many duties, it is well for board members to remember that the supervisor is the agent of the township for the conduct of all legal business,³⁷ and that only the supervisor and clerk may borrow money for the township after being authorized to do so by the board.³⁸ All borrowings must be made in accordance with statute, including approval of the Municipal Finance Commission.

Constitutional Protections for Township

Township officers are protected by the constitution of the state, and the legislature cannot deprive township officers of their powers and attempt to confer these powers on persons not of local choosing.³⁹ The legislature cannot require townships to do what is forbidden by the constitution.⁴⁰ Equally, the county board of supervisors is forbidden to interfere with the local affairs of any township.⁴¹ Although the board of supervisors has power under special procedures and by a three-fifths vote to change township lines, and to alter or consolidate existing townships, or create new ones, it may only do this upon proper petition by electors of the township and after approval by a majority of the voters affected.⁴²

Conflict of Interest; Nepotism

Any board member who may benefit directly by a proposed resolution or ordinance should take no part in discussion of or voting on the subject under consideration. Under such circumstances his participation may mean that the action of the board will be invalidated by the courts. Where the board member is merely part of the general public which is benefited, he is not excluded from acting as a member of the board. The interest must be reasonably close. For instance, a board member is not disqualified where a program to spray streams for insect control or to control noxious weeds may benefit his adjoining property among others.⁴³ A township board may purchase for a public purpose land owned by one of its members, but only if the landowner-board member takes no part in the consideration of the acquisition.⁴⁴ Where the matter at hand concerns a relative not of his immediate family, and where the board member has no direct interest in the issue, this does not disqualify the member, as for instance where the matter concerns a niece of the board member.⁴⁵ However, where the interest is reasonably direct, as where the board member has signed a petition urging certain action, the member should not sit on the board in passing on the petition.⁴⁶

The same rules have been applied in connection with an appeal from a subordinate board where two members of the township board were interested personally and financially in the subject matter of an appeal.⁴⁷ In matters such as this, the legal quorum number of board members still sitting should be looked to, since if the three or four lower limit requirement is no longer satisfied after the interested members have retired, the rest of the board can take no legal action on the issue.⁴⁸

Required Records; Deputies and Substitutes

The township board is expected to keep records of its meetings, so in the absence of the town clerk, another member of the board may be appointed to act as temporary secretary, or the board may even designate an

outside person to act as secretary for just that meeting. This person has no power to take part in discussion or vote.⁴⁹ Under Public Acts 221, 1957, if the township clerk or his deputy is not available to perform any functions as to registrations, nominations, or elections, the township board may appoint a registered elector to carry on until the clerk or his deputy is available. No question of compensation usually arises in such a case, but since the township board has general power to compensate persons doing necessary work for the township on a temporary basis, and is authorized by statute to appoint such persons, it seems that they may properly be paid a reasonable amount.

Footnotes

1. MCL 1948 s. 41.70, MSA ss. 5.62.
2. MCL 1948 s. 41.70, MSA ss. 5.62, 6.1358; Op. Atty. Gen. 1912, p. 323; 1945-46, p. 344, no. 0-3568.
3. Op. Atty. Gen. 1951-52, p. 237, no. 1398.
4. MCL 1948 ss. 168.342, 41.103, MSA ss. 6.1342, 5.152; Op. Atty. Gen. 1913, p. 271, 446; 1921-22, p. 147; 1914, pp. 573, 652; 1949-50, p. 254, no. 992; 1955, p. 7, no. 1898; 1939-40, p. 362.
5. MCL 1948 s. 168.362, MSA s. 6.1362.
6. Op. Atty. Gen. 1928-30, p. 306. See also Op. Atty. Gen. 1945-46, p. 287.
7. MCL 1948 s. 41.211, MSA s. 6.331, and see also Const. 1908, Art. III, s. 1 as amended 1950.
8. MCL 1948 s. 168.343, MSA s. 6.1343.
9. MCL 1948 s. 168.341, MSA s. 6.1341.
10. MCL 1948 s. 168.356, MSA s. 6.1356.
11. MCL 1948 s. 168.348, MSA s. 6.1348.
12. MCL 1948 s. 168.645, MSA s. 6.1645.
13. Op. Atty. Gen. 1952-54, p. 446, no. 1885.
14. Op. Atty. Gen. 1914, pp. 72, 80, 89-90, 284, 573, 588, 627, 660, 671, 821; 1916, p. 240; 1943-44, p. 399, no. 0-757, p. 456, no. 0-995; 1956, p. 405, no. 2675, p. 432, no. 2692.
15. MCL 1948 s. 168.371, MSA s. 6.1371.
16. MCL 1948 s. 168.359, MSA s. 6.1359.
17. MCL 1948 s. 41.55, MSA s. 5.39.
18. MCL 1948 s. 168.368, MSA s. 6.1368.
19. MCL 1948 s. 168.367, MSA s. 6.1367.
20. *Edwards v. U.S.*, 1880, 103 U.S. 471, 26 L.Ed. 314; *Thompson v. U.S.*, 1881, 103 U.S. 480, 26 L.Ed. 521.
21. MCL 1948 s. 168.369, MSA s. 6.1369.
22. *Germaine v. Ferris*, 176 M. 585.
23. Op. Atty. Gen. 1925-26, p. 26.
24. MCL 1948 s. 41.69, MSA s. 5.61, and see MCL 1948 s. 41.73, MSA s. 5.65. See Chapter 3.
25. Op. Atty. Gen. 1955, p. 399, no. 2199.
26. *Dubois v. Riley Tp. Bd.*, 1901, 126 M. 587, 85 N.W. 1067; Op. Atty. Gen. 1912, p. 408; *Kennedy v. Van Buren County Drain Comr.*, 1916, 189 M. 676, 155 N.W. 733.
27. MCL 1948 s. 168.370, 41.15; MSA ss. 6.1370, 5.15. See also MCL 1948 s. 201.31 et. seq., MSA s. 6.711 et seq.
28. MCL 1948 s. 168.370, MSA s. 6.1370, and see Op. Atty. Gen. 1909, p. 129.

29. MCL 1948 s. 41.59, MSA s. 5.43.
30. Peck v. Bd. Supervisors of Berrien County, 1894, 102 M. 346, 60 N.W. 985.
31. Op. Atty. Gen. 1945-46, p. 378.
32. MCL 1948 s. 41.58, MSA s. 5.42; Op. Atty. Gen., 1912, p. 85.
33. Op. Atty. Gen. 1928-30, p. 708.
34. MCL 1948 s. 41.24, MSA s. 5.24.
35. People ex rel. Bennet v. Benfield, 1890, 80 M. 265, 45 N.W. 135.
36. Op. Atty. Gen. 1949-50, p. 235, no. 953.
37. Hall v. Dickenson, 1919, 204 M. 545, 170 N.W. 646 and footnote 38.
38. MCL 1948 ss. 41.64a, 41.131, MSA ss. 5.56, 5.161; Hanslovsky v. Leland Tp. 1937, 281 M. 652, 275 N.W. 720.
39. Davies v. Saginaw County Bd. Supervisors, 1891, 89 M. 295, 50 N.W. 862.
40. People ex rel. Bay City v. State Treasurer, 1871, 23 M. 499.
41. MCL 1948 s. 46.11 (13), MSA s. 5.331 (13).
42. MCL 1948 s. 46.14, MSA s. 5.337.
43. Stockwell v. White Lake Tp. Bd., 1871, 22 M. 341; Wilson v. Burr Oak Tp. Bd., 1891, 87 M. 240, 49 N.W. 572; Clement v. Everest, 1874, 29 M. 19; Hamtramck Tp. Bd. v. Holihan, 1881, 46 M. 127; 8 N.W. 720.
44. Op. Atty. Gen. 1915, p. 586.
45. Hamtramck Tp. Bd. v. Holihan, footnote 43.
46. Op. Atty. Gen. 1914, p. 356.
47. Wilson v. Burr Oak Tp. Bd., footnote 43.
48. See e.g. Op. Atty. Gen. 1912, p. 323.
49. First Nat'l Bank of St. Joseph v. St. Joseph Tp., 1881, 46 M. 526, 9 N.W. 838.

CHAPTER 3

The Township Meeting, The Board Meeting

The Annual Meeting

The electors of each township join together at the annual meeting to receive the reports of public officials, to make ordinances, to pass upon the performances of township officials in the past year, to pass upon the transaction of financial affairs, and also to consider and vote upon expenditures for the coming year. Under Public Act 105 passed in 1956, the annual township meeting is held on the Saturday immediately preceding the first Monday in April at a time and place selected by the township board. Where formal resolution is made to this effect, and proper notice given, the specially designated place is the proper one for the meeting. At the meeting, all business except where specially designated otherwise by statute, is to be conducted by voice vote of the electors present.¹ This meeting must be held, and townspeople must be given the opportunity to transact town business,² unless the township has chosen to abandon the annual town meeting by proper action.

Abolishing the Meeting

In any township with a population of over five thousand, action toward abolishing the meeting may be started either by a resolution of the township board submitting the issue to the voters, or by a petition of 8 percent of the electors asking that the issue of abolition be submitted to the voters. In either case, the question of abolishing the town meeting is submitted to the voters at the next regular primary or general election. If approved, the annual meeting is abolished.³ Where the township chooses to abandon the township meeting, the town board succeeds to most of the powers held by both board and meeting although many issues must still be voted on by the people at the township elections. This is very much like the "representative town meeting" used in many states as a transition form of government intermediate between the town meeting of the small community and the village or city council and charter of the large community.

Requirements of a Valid Meeting; Moving Place or Time of Meeting

No separation of the electors, either in time or place, is possible if the meeting is to be valid. All the electors must meet at the same place at the same time.⁴ Only a person qualified as an elector under the provisions of the Michigan Constitution may vote at the annual meeting.⁵ The meeting

may be held at any convenient and suitable place, and need not be held on premises owned by the township.⁶ Where it proves inconvenient to have the meeting at the place designated, because too many people are present for the capacity of the place chosen, or for other good reason, the meeting should be opened at the designated time and place and then immediately adjourned to the nearest convenient place for holding the meeting.⁷ Proper record of the fact of moving the meeting must be made, notices posted as convenient, and the constable or other proper person must remain at the spot originally scheduled to direct late-comers to the meeting.⁸

Upon arrival at the new meeting place, a suitable space of time should be allowed to permit electors to arrive, and then business should get under way without further delay. Where the situation is such that a proper meeting cannot be held, the meeting itself by majority vote may provide that the meeting should be held at another day or time. However, the election of officers may not be delayed, and this business must be attended to before any adjournment to another day or time may take place.⁹ Not only may the annual meeting be thus transferred, but also any special meeting as well. The statutes referring to moving the place of the meeting direct the board of inspectors to see that the proper procedures are observed. Since the town meeting is now no longer held while the spring election is going on, the board of inspectors has nothing to do with the township meeting. However, the supervisor or other presiding officer at the township meeting should see that the proper procedures are followed.

Presiding Officer of Meeting; Voting; Power to Keep Order

The supervisor is the presiding officer and moderator at the town meeting. If he is absent, the town clerk is to preside temporarily until the meeting elects its own presiding officer for the purposes of that meeting.¹⁰ Such voting for a temporary moderator is to be done by voice vote. The supervisor or other presiding officer has all the regular duties of a chairman, including estimating and declaring publicly the results of a voice vote. If seven of the electors present question his decision, the moderator then must proceed to poll the voters or to divide the meeting, unless the township by a previous vote or in its by-laws has provided for some other procedure in such cases.¹¹ The moderator has full power to maintain order. Only persons recognized by him have the right to speak.¹² After due warning, the moderator may call upon the township peace officers to enforce order.¹³ Any disorderly person who persists in creating a disturbance after being warned by the moderator to be quiet or to withdraw from the meeting, may be fined twenty dollars.¹⁴

Permitted Topics of Discussion; Notice

With all preliminary matters thus taken care of, the meeting may proceed to the orderly discussion of the business at hand. Any matter properly

within the power of the township may be taken up. No previous notice that a certain matter will be considered at the meeting is necessary,¹⁵ since the regular annual meeting is privileged to consider any matter at all, and to pass any resolution or ordinance within its power. In this respect, the annual meeting is unlike the special meetings which may be called from time to time. Unless it is to take place at a specially designated place, no notice is necessary for the annual meeting. However, since township meetings are no longer held at precinct number one, it would appear that necessarily there must be notice for all meetings. As a matter of policy, such meeting should be well-publicized in advance.

Special Township Meetings

Where events require it, a special town meeting may be held.¹⁶ Such meetings are to be ordered by the board on the written request of twelve electors of the township. Such a petition should give the reason for the proposed meeting, and the matters to be discussed, in detail.¹⁷ Only those matters which have been listed in the notices of special meetings may be discussed and passed upon. Any meeting not called as described is void as to all its proceedings.¹⁸ Upon receiving such a petition, the board must call the special meeting. The order for the meeting must specify the time, place, and purpose of the meeting. If the meeting is called to fill vacancies in town offices, the notice must state which vacancies there are, how the vacancies occurred, the name of the former incumbent, and if the office is that of justice of the peace, when the constitutional term of office will expire.¹⁹

Failure to Act: Mandamus

Upon receiving a petition for a special meeting, the board must call such meeting. In this instance, as in others where public officials are ordered by statute to act, the citizen's remedy in case the official refuses to act is to institute a petition for mandamus in the proper court. Mandamus is the traditional remedy intended for such cases. In effect, the court orders the official to do his duty and upon refusal or inaction, the court finds him in contempt and sentences him in accordance with the contempt statutes or common law. In some instances, public officials such as sheriffs, tax collectors and town treasurers, are required to post bond to assure faithful performance of their duties. In this case, although the remedy of mandamus is available, the citizen will usually proceed directly against this bond for its forfeiture.

Requirements for Special Meeting; Publication

The meeting must be held within fifteen to twenty days after the order is issued by the board. The board must deliver the order to the town clerk within two days after it is made. The clerk must record the order, and

proceed to notify the electors.²⁰ Within two days after he receives and records the order, the clerk must post a copy in the three most public places of the township, and must secure publication of the notice in a newspaper of general circulation in the township at least five days before the meeting, if practicable.²¹ Even if the public notices are later destroyed by the elements or other causes, the fact that the clerk did post them is enough to make the meeting valid.²² Note that if a statute provides for some special method of publishing notice, or for some special time sequence, then that statute governs, and any action taken under the special statute is valid for the special purpose involved.²³

Required Records of Meetings

The town clerk must keep a careful record of the proceedings at all special meetings, just as he must keep a record of all township board meetings and of all regular town meetings.²⁴ If the township has a valuation of twenty-five million dollars or more, the records of such meetings must be published in good form.²⁵ However, failure of the clerk to keep a good record does not make the action of the special meeting void. In this case, as in the case of meetings of the board and annual meetings, if everything else is in regular form the meeting is good for all purposes despite the incomplete or faulty record.²⁶ The record may be filled in by oral testimony of persons who were present, if necessary.²⁷ However, in order that the record should be fully acceptable as a proper one, it must be kept in full detail, and this is the duty of the clerk. Much troublesome litigation may be avoided by good, carefully-kept records, since courts give them heavy weight in legal proceedings. The record of a special meeting should show that all preliminary requirements have been complied with, and in addition, should show in detail the proceedings at the meeting.²⁸ Motions, seconds, and the result of the vote should be kept carefully and accurately. Names of persons speaking should be kept where possible, and it is helpful to record a summary of what each person had to say.

Ratification of Ultra Vires Acts by Meeting or by Legislature

There is no limit on the number of special meetings which may be called, and where the proper steps are taken, a meeting may be called at any time.²⁹ As already pointed out, the special meeting is limited in discussion and ordinance-making power to those subjects described in detail in the notice.³⁰ A properly called meeting may ratify acts done by the township board which were beyond the board's power, but within the power of the meeting.³¹ However, where neither the board nor the meeting has authority by statute to do a certain act or pass a certain ordinance or resolution, the meeting is without power to ratify.³² If the special meeting is somewhat irregular, but fulfills substantially the statutory requirements, it seems that the legislature may ratify the proceedings,³³ but there is considerable

doubt as to how far this power of the legislature to ratify proceedings at an irregular meeting extends.

Township Board Meetings, Regular and Special

In addition to the annual meeting, the township board must provide by resolution for the time and place of regular board meetings. These meetings should be held as often as necessary to take care of township affairs, and are usually scheduled for once a month. No notice is necessary for such regularly scheduled meetings.³⁴ Under the statute, there must be at least one regular board meeting every three months.³⁵

When the board deems it necessary to handle some pressing matter, it can schedule special meetings in addition to the regular ones. Such meetings are provided for by simple resolution giving time and place of the meeting, and the matters to be discussed in detail. The supervisor at his discretion may also cause such a special meeting to be called. The town clerk is notified of the fact that a special meeting is to be held. He must then inform every member of the board that a special meeting is scheduled, either by contacting him personally, or by mail.

Where a quorum shows up for the meeting, but one or more members are missing, the meeting may only handle the matters mentioned in the notice. However, if all members are present, then the board may proceed to discuss any matter within its power, and to pass resolutions or ordinances, just as if the meeting were a regular one. It is impossible to over-emphasize the importance of the board's assuring itself that it takes no unusual action at a special meeting unless all members are present, or unless the matter taken up was mentioned specifically in the notice.

Failure to attend to the matter of notice has caused probably as much litigation as any one other point in the field of local government in Michigan. If the meeting is not duly called and the members duly notified, it is illegal, and lacks any power at all.³⁶ If all members appear anyway, defects in notice are cured, and the board may proceed with its business. Members have asserted on many occasions that they never received the notice of the meeting, and so did not appear. However, where the notice is sent out, and the records of the clerk's office show this fact, there is a very strong presumption that the member received the notice. Nevertheless, it may be possible for a third person to cause the proceedings of the special meetings to be declared invalid where he can show that not all members were present, and the member never received the notice.³⁷ It is not enough that a quorum shows up, where insufficient notice was given to members.³⁸

No board action is valid unless the members are gathered together at a proper meeting, and individual assents of members to a matter, obtained

outside a meeting, are meaningless for legal purposes.³⁹ No delegation of powers, duties, or the right to vote is possible, and all members must act personally. Where all members of the board try to delegate their powers and duties to one of the members, there is no valid delegation.⁴⁰ In other words, the meeting must act as a meeting, and proxies or informal conferences will not serve the purpose.

Required Records of Board Meetings

Where the valuation of the real property in the township is over twenty-five million dollars, the record of the proceedings of the board must be published in a newspaper of general circulation within the township within ten days after the meeting.⁴¹ As pointed out in the section on the town meeting above, it is extremely important that regular and orderly records of all proceedings be kept by the town clerk, and the records should show the names of the persons speaking. For the purposes of fulfilling the newspaper publication requirement, the full record need not be printed in detail, as long as an accurate summary is prepared by the clerk and approved by the supervisor.⁴² Where the record is kept in what appears to be a workmanship fashion, and no clerical mistake has occurred, the record is accepted by the courts as being a complete statement of what occurred, and oral evidence is no good which tries to show that something else occurred or that a resolution or ordinance was worded differently from what appears in the record.⁴³ However, where the record is poorly kept, the courts will receive the testimony of members of the board in an attempt to determine what actually occurred.⁴⁴ Any papers, such as typewritten reports or official papers, which are attached firmly to the page of the township record and are officially signed or obviously meant to be part of the record, are part of the record for all purposes.⁴⁵

Township a Body of Limited Powers

The township is created by the Constitution of Michigan, but it has only those powers granted it by the legislature.⁴⁶ The legislature need not give the township any powers at all if it chooses not to. Where the legislature allows an act, or has not seen fit to pass a statute on the matter, and has not given the township the power to regulate the same act, then the township has no power to act at all.⁴⁷ For instance, the township cannot close the area within its borders to hunting,⁴⁸ nor can it appropriate a portion of a surplus in the township contingent fund to a city road commissioner to be used in maintenance of roads formerly within the township but now part of the city road system.⁴⁹

Voting at Meetings of the Township Board

Every member of the board has one vote, and has an absolute right to vote on all questions.⁵⁰ The supervisor and clerk are automatically mem-

bers of the board and have the same right to vote as any other member. In case of a tie on an issue, the proposition is rejected or the motion defeated.⁵¹ Neither the supervisor nor anyone else has the right to vote to break a tie,⁵² except, of course, where on a new vote, a member who has abstained before now chooses to vote. The highway commissioner is not a member of the board, and has no right to take part in meetings or to vote.⁵³

Recording and Publication of Ordinances and By-laws

All ordinances must contain a provision stating when they are to take effect. Where the ordinance provides for a penalty of any type for violation of its provisions, the statutes provide that it cannot take effect until thirty days after publication. The clerk must take the proper steps to see that notice of the ordinance is published in a newspaper of general circulation within the township within ten days after passage.⁵⁴ The maximum penalty allowed in such "criminal" ordinances cannot exceed that provided by the legislature for misdemeanors. If the ordinance provides no penalty for violation, it takes effect immediately on publication. Within a week after the first publication, the clerk must record the ordinance officially in a book of ordinances to be kept by him, together with the date of passage, the names of members voting on it, and how each member voted. The clerk also must make and sign a certificate below the entry in the book, stating the date of publication and the name of the newspaper in which published.⁵⁵

Footnotes

1. MCL 1948 ss. 168.361, 41.8, MSA ss. 6.1361, 5.8.
2. Op. Atty. Gen. 1943-44, p. 670, no. 0-1889.
3. MCL 1948 s. 168.361, MSA s. 6.1361.
4. Aud. Gen. v. Duluth, S. Shore and Atl. Ry. Co., 1898, 116 M. 122, 74 N.W. 505.
5. MCL 1948 s. 41.102, MSA s. 5.151.
6. Op. Atty. Gen. 1949-50, p. 254, no. 992.
7. MCL 1948 s. 41.17, MSA s. 5.17.
8. MCL 1948 s. 41.18, MSA s. 5.18.
9. MCL 1948 s. 41.19, MSA s. 5.19, Op. Atty. Gen. 1949-50, p. 258, no. 994.
10. MCL 1948 s. 41.97, MSA s. 5.84.
11. MCL 1948 s. 41.98, MSA s. 5.85.
12. MCL 1948 s. 41.99, MSA s. 5.86.
13. MCL 1948 s. 41.100, MSA s. 5.87.
14. MCL 1948 s. 41.101, MSA s. 5.88.
15. MCL 1948 s. 41.29, MSA s. 5.29.
16. MCL 1948 s. 41.25, MSA s. 5.25.
17. MCL 1948 s. 41.25, MSA s. 5.25.
18. Loomis v. Rogers Tp. Bd., 1884, 53 M. 135, 18 N.W. 596.
19. Same as 18, and MCL 1948 s. 41.26, MSA s. 5.26.
20. MCL 1948 s. 41.27, MSA s. 5.27.
21. MCL 1948 s. 41.28, MSA s. 5.28.
22. Kelsey v. Burns Tp., 1923, 223 M. 173, 193 N.W. 822.

23. Miller v. Grandy, 1865, 13 M. 540.
24. MCL 1948 s. 41.66, MSA s. 5.58.
25. MCL 1948 s. 41.122, MSA s. 5.122.
26. Rondot v. Rogers Tp., 6 cir., 1900, 39 C.C.A. 462, 99 F. 202; Aud. Gen. v. Longyear, 1896, 110 M. 223, 68 N.W. 130.
27. McGaughan v. W. Bloomfield Tp., 1934, 268 M. 553, 256 N.W. 545.
28. Taymouth Tp. v. Koehler, 1876, 35 M. 22; Loomis v. Rogers Tp. Bd., 1884, 53 M. 135, 18 N.W. 596.
29. Op. Atty. Gen. 1949-50, p. 258, no. 994.
30. Op. Atty. Gen. 1941-42, p. 559, no. 23142.
31. Rubatt v. Wakefield Tp., 1927, 239 M. 536, 215 N.W. 38.
32. People ex rel. Gale v. Onondaga Tp. Supervisor, 1867, 16 M. 254.
33. Crittenden v. Robertson, 1864, 13 M. 58.
34. Same as footnote 30.
35. MCL 1948 s. 41.73 (1), MSA s. 5.65 (1).
36. Beaver Creek Tp. Bd. v. Hastings, Tp. Clerk, 1884, 52 M. 528, 18 N.W. 250; Op. Atty. Gen. 1915, p. 509; 1941-42, p. 559, no. 23142; 1949-50, p. 235, no. 953.
37. Boyce v. Aud. Gen., 1892, 90 M. 314, 51 N.W. 457, aff'd. 90 M. 326, 52 N.W. 754.
38. Aud. Gen. v. McArthur, 1891, 87 M. 457, 49 N.W. 592.
39. Sandstone Tp. v. Mich. Ry. Co., 1917, 198 M. 234, 164 N.W. 404. See also Rolland Tp. v. Pakes, 1924, 226 M. 284, 197 N.W. 525.
40. Op. Atty. Gen. 1951-52, p. 454, no. 1530.
41. MCL 1948 s. 41.73 (1), MSA s. 5.65 (1).
42. Same as footnote 41.
43. Aud. Gen. v. Sparrow, 1898, 116 M. 574, 74 N.W. 881.
44. McGaughan v. W. Bloomfield Tp., footnote 27.
45. Rubatt v. Wakefield Tp., footnote 31.
46. Mich. Const. 1908, Art. VIII, s. 17; Dearborn Tp. v. Dearborn Tp. Clerk, 1952, 334 M. 673, 55 N.W. 2d 201.
47. Gust v. Canton Tp., 1953, 337 M. 137, 59 N.W. 2d 122.
48. Op. Atty. Gen. 1943-44, p. 558, no. 0-1440.
49. Op. Atty. Gen. 1943-44, p. 479, no. 0-1092.
50. Op. Atty. Gen. 1912, p. 389, 1914, p. 309.
51. Op. Atty. Gen. 1913, p. 453.
52. Prince v. Oakfield Tp. Bd., 1914, 182 M. 216, 148 N.W. 438; Op. Atty. Gen. 1913, p. 610.
53. Op. Atty. Gen. 1923-24, p. 253-4.
54. MCL 1948 s. 41.191, MSA s. 5.6 (1).
55. MCL 1948 s. 41.192, MSA s. 5.6 (2).

CHAPTER 4

Board Power to Tax and Appropriate; Salaries and Compensation of Township Officers

General

The township is a body of limited powers. It may tax only where allowed to do so by statute. Approval by the voters is necessary in almost all instances where money is to be spent for other than ordinary township expenses.

Powers of Board and Meeting; Limits on Taxation and Appropriation

The taxing powers of the township are limited by statute and constitution, in particular by MCL 1948 s. 41.3, MSA s. 5.3, and the fifteen mill limitation of Mich. Const. 1908, Art. X, s. 23. The meeting may not allow more than four thousand dollars in one year for contingent and ordinary expenses if it is a township of usual size. However, there are these exceptions: (1) Where the assessed valuation of real estate in the town is one and a half million dollars or less, the limit is three thousand dollars; (2) Where the township has ten or more election precincts, the taxing limit is five thousand dollars; (3) In the case of the township with assessed value of eight million dollars or better, the meetings may vote up to one-half of 1 percent of the assessed valuation per year in taxes, based on the assessment roll of the previous year; (4) Where the assessed valuation is between six and eight million dollars, the township board may present to the electors at a regular or special meeting the question of whether the township should have a similar taxation limit. On approval by a majority of the voters, such a township may tax up to one-half of 1 percent as above. There may be limitations expressed elsewhere. For instance, the board member should keep in mind the constitutional fifteen-mill limitation set forth in Mich. Const. 1908, Art. X, s. 23. This provides that the total amount of taxes assessed against property for all purposes in any one year shall not exceed $1\frac{1}{2}$ percent of the assessed valuation of that property. However, by a majority vote of the electors of any assessing district, this limit may be increased, for a period of not more than twenty years at any one time, to not more than 5 percent of the assessed valuation. The board member should also keep in mind the necessity of Allocation Board approval of millage, and other tax limitations, including limits on the amount of special assessments against any one piece of property, expressed elsewhere.

Earmarked Funds; Limits on Expenses and Liabilities

In the ordinary township, not more than five thousand dollars may be voted by the meeting for "township purposes." All taxes levied above that figure must be for specific purposes. Money so raised is to be placed into a special "earmarked" fund, and may be used for no other purpose. Again, MCL 1948 s. 41.3, MSA s. 5.3, makes these two exceptions: (1) in townships of more than eight million dollars valuation, amounts up to one-half of 1 percent may be so raised for contingent or ordinary expenses, and (2) in a township of six to eight million valuation, one half of 1 percent may be assessed, the majority of electors having voted in favor.

No township board or officer may create any debt or liability, issue any warrant, order for payment of money, or the like, except where authorized by vote of the township meeting, or by approval of the board as detailed below, or otherwise as approved by law.¹

Neglect or Refusal; Powers and Limitations of Board

Where the electors at the township meeting neglect or refuse to vote the money necessary for ordinary township expenses, or to meet emergency expenses, the township board may vote such taxes as are necessary at any regular meeting. The sum so voted by the board must not exceed one-half of one percent of assessed valuation in any one year. If necessary to borrow money to meet such expenses, the board may authorize and direct the supervisor and the clerk to borrow such sums as may be necessary. In the ordinary township, not more than one thousand dollars may be borrowed in any one fiscal year. The "obligations of the township," that is, notes and warrants of the usual kind, may be issued to secure the loan. In townships with an assessed valuation of ten million dollars or more, the board may authorize and direct the supervisor and clerk to borrow up to \$12,500 in one year.² It is well for board members to keep in mind that all township borrowing is subject to the approval of the Municipal Finance Commission.

Budget for Coming Year

The supervisor and other officers of the township must be prepared to tell the annual township meeting the approximate expenses to be expected in the coming year. Except in those townships which have elected to abandon the town meeting, the intention of the statutes is plain that the meeting shall be offered a clear budget of expenses and expenditures planned for the coming year. It is only where voters are presented with a clear budget and given an opportunity to vote on it, and thereafter neglect or refuse to vote money necessary for ordinary and continuing expenses for the coming year that the township board has the right to proceed to levy taxes as may be necessary. Board members who vote taxes which the

citizens have had no opportunity to consider may find themselves embarrassed by a legal action brought by a dissatisfied taxpayer.

Summary; Neglect and Refusal; Required Records

To summarize, then, when electors at a township meeting, after being fully informed, neglect or refuse to vote money necessary for ordinary and continuing township expenses, or to meet emergency expenses, the township board may vote such a levy as may be necessary at any regular meeting.³ Here again, the emergency must be a real one, and the citizens must have been informed of it and have had the opportunity to approve expenditures to cover the situation at a township meeting, and have neglected or refused to do so.⁴ The record of the township board meeting must show the fact of neglect or refusal.⁵ No recording of votes is necessary, though, as long as the clerk's record shows that the tax was approved.⁶ The supervisor may not levy taxes not approved by either the board or the electors.⁷ Both board and electors are limited by statute and usage as to the proper areas for township action, and statutory authority must be found before either may vote taxes.⁸

Examples of Ordinary and Unusual Expenses

For instance, indebtedness of a township to another set off from it is an ordinary expense, but expenditures to establish lost section corners or to build a township hall are not ordinary, and must be provided for by action of the township meeting, and can never be approved by the board alone.⁹ Provision for erecting a fair ground is not ordinary.¹⁰ Support of the poor is ordinary,¹¹ but if the board has levied taxes and borrowed to the limit set by statute, it cannot borrow further, even for badly needed poor relief.¹² Of course, poor relief is now almost everywhere in the state a county function, like other health and welfare functions. A school tax is not ordinary, nor is a mill tax for school purposes, nor a tax to pay a judgment against the township.¹³ An order for future payment of money with annual interest is not ordinary, even where allowed by statute, and cannot be issued without the vote of the electors.¹⁴

It will be seen that "ordinary expenses" amount to those expenditures which are necessary for smooth day-to-day running of the township government, and for coping with continuing menaces to health or welfare. New capital structures, unusual campaigns for clearing weeds or for dealing with an outbreak of animal disease, or in general, expenditures in any large amount for unusual purposes are not regarded as ordinary. As the Michigan Supreme Court has said, however, "'Ordinary expenses' can never include less than necessary expenses in administering township government according to the statutes in such manner as best to promote the

convenience, peace, health, prosperity, and happiness of the people residing therein.”¹⁵

Where permitted by statute, the board may borrow money where township meetings neglect or refuse to vote such taxes,¹⁶ and in doing so, the board is subject to the same legal limitations as the meeting in choosing the subjects of taxation.¹⁷ Approval of the Municipal Finance Commission is necessary before any such borrowings.

Money Required by Statute to be Voted; Contingent Fund

Certain sums must be voted by the board on behalf of the state, as for instance, sums necessary to allow the clerk to carry out his duty of distributing state books.¹⁸ The board has certain leeway in voting funds. Thus, it may vote an amount for contingent expenses, based upon past experience, without specifying the detailed items contemplated.¹⁹

Areas Closed to Township Action

As mentioned above, certain areas are closed to townships entirely, and no valid action is possible in these areas by either the board or the meeting. No matter how desirable, health-promoting, reverent, or patriotic certain measures may be, neither the board nor the meeting can act unless permitted to do so by specific statute, unless such activity falls within the “ordinary and necessary expense” area. For instance, the township cannot raise money by tax to invest in U.S. Government bonds,²⁰ nor can it reimburse town officials for amounts spent for legal services in defending their interests in a grand jury investigation, or in other legal proceedings,²¹ nor can it enact a comprehensive traffic ordinance.²² The Board may not compel the registration of motorboats or licensing of owners and operators,²³ and it may not employ a person to help residents with rationing problems,²⁴ nor can it purchase a lot and building to house county road equipment,²⁵ nor can it contribute funds to pay a proportional cost for county “childhood workers,” since such an expenditure is not for a “township purpose.”²⁶ It cannot lend money to a city public works official to pay the cost of a tube to be put under a city road,²⁷ nor divert money to pay private debts or obligations,²⁸ nor make what the state designates as a district charge into a township charge, by retiring orders drawn on district funds and issuing township orders in their place.²⁹

The board cannot assist 4-H clubs by appropriating money to aid in repair of fair ground buildings purchased by a city and used by the county 4-H club for fair purposes,³⁰ nor may it vote money to aid a church, nor to aid all churches in town equally.³¹ Again, a state law, which allowed a township board to lend money from its general fund to meet obligations due from a special assessment fund, such money to be repaid from special assessment funds as collected, was held not to permit the reassessment of

amounts remaining uncollected on the original adequate assessment even though these uncollectible amounts results in collections insufficient to reimburse the general fund.³²

Neither can the township approve appropriations for public relations advertising,³³ nor for soil conservation where no statute covers the situation.³⁴ However, under Public Acts 212, 1957, the board may appropriate funds to advance the study of township history. The township board may not sell or dispose of the township's real property, except with the consent of the electors. Only in the case that land has been acquired for a particular purpose may the township board dispose of it in furtherance of that purpose, or after the planned use has been completed, without approval by the town meeting or at the polls,³⁵ and then the requirements of MCL 1948 s. 41.445a, MSA s. 5.275 (1), must be complied with. Despite the current movement in industry and on other levels of government to guarantee to workers "fringe benefits," so called, such as group life insurance, death benefits, and sickness benefits, the township board may not grant any such benefits to employees unless the legislature provides specifically that boards are empowered to provide for such.³⁶ The board may choose to place its employees under the State Municipal Employees Retirement System and under Social Security. Though it may seem self-evident, the township board may not exercise any powers beyond the actual geographic limits of the township without special legislative provision.³⁷

Problems Created by Splitting-Off of Other Local Units

A village contained within a township is subject to township assessment for township obligations, and continues liable until incorporated into a city.³⁸ The settlement of debts, tax obligations, bonds, funds, and other money matters between a township and a city newly created from it is a complex matter, and beyond the scope of this book.³⁹ Where one township is split off from another, and an agreement is made between the two township boards to settle financial affairs, the settlement is a fixed debt against the new township, and the new board must allow it and order the township treasurer to pay.⁴⁰ The old township may levy taxes and collect them in the township set off until new officers are elected in the new township.⁴¹ Uncollected but due taxes are to be apportioned between new and old townships just as are other credits due.⁴²

In the same fashion, when the township is split by the legislature and part of the existing debt is apportioned to the new town, it becomes liable on judgments issued in suits commenced before the split but not decided by the courts until afterwards. In this case, such judgments are to be apportioned in the same ratio as the other debts were at the time of the separation.⁴³

Compensation of Board Members

Normally, the electors fix the compensation of board members at the annual meeting. The board may recommend certain salaries in the proposed budget, and if the voters approve, the salaries are effective. If this is not done and the voters do not fix the salaries at the annual meeting, the old salaries prevail, and cannot be changed during the term even by the voters themselves. A statute which would have allowed the voters to vary salaries by referendum has been declared unconstitutional. Members of the board may be on a salary basis, but are commonly paid on a per diem basis. Supervisors, clerks, and some treasurers are commonly paid a salary. Trustees are generally compensated on a per diem basis. Board members have no power to increase the remuneration for themselves where the annual meeting has voted a certain amount for attending the sessions of the board. It makes no difference whether there are special meetings or other special duties, and moneys can be paid out only according to the rates or schedules approved by the meeting.⁴⁴

Compensation of Other Officers

Other officers whose compensation is on a per diem basis are those on the boards of registration, health, and review, the inspectors of elections, clerks of the poll, and the commissioners of highway. Where the voters disapprove of the compensation set by the board, and act to set it aside at a meeting, the officers named are continued at the same compensation as allowed in the previous year. The vote of a preceding township board is not permitted to authorize a monthly salary for incoming members of the township board.⁴⁵ The best practice is to put the salaries for the next term in the proposed budget and submit it to the voters at the annual meeting. The township board makes provision for those officials, the supervisor, treasurer, and clerk, who are allowed a salary by statute. The salary of an official may not be changed during his term of office, and the salary change only becomes effective with the election or appointment of the new incumbent.⁴⁶ Where the voters have abolished the annual meeting, the board fixes the salaries for the next term at the last board meeting of the old term but each salary so fixed is subject to referendum upon filing of the proper petitions signed by voters.

The Nature of Compensation; Legal Definitions and Limitations

Compensation or salary of an officer is not a payment for work done, but rather a payment to the holder of the office. If one person carries out the duties of the office, and subsequently the courts decide that another person was lawfully elected or appointed to the office, the second person is entitled to the money.⁴⁷ The board is bound by the most recently voted compensation, and cannot pay more on the basis of the prior action of

any previous board.⁴⁸ The board cannot allow "mileage" to its members for driving back and forth to official duties, unless specifically authorized by the legislature in the particular instance,⁴⁹ though the annual meeting may probably allow "mileage" as part of the member's compensation.

Where members of the board are paid on a "per diem" basis, the members may only be paid for a full day when actually engaged in township business during the whole working day.⁵⁰ Parts of the day must be prorated on a reasonable basis.⁵¹ On the other hand, there is no presumption of an eight-hour day as a proper working day for township officials, and no extra compensation may be given for "overtime."⁵² On whatever basis paid, excluding salaried officers, the township may only pay for work actually performed.⁵³ Where a town official or agent has been engaged in an unlawful act, or an act not permitted to the town by statutes, or court decisions, or where the board has the power to approve certain acts by the official involved but has not done so, the officer or agent acts on his own responsibility, and the town may not compensate him for the time so spent.⁵⁴ In all cases where services are rendered to the township officers, agents, or workers, in pursuance of the proper business of the township, the board may audit and allow a reasonable compensation in all those cases where a definite compensation or salary is not provided by law.⁵⁵

The courts have made it clear that neither the board nor the meeting may pay a salary to an officer or agent of the township unless authorized specifically by statute.⁵⁶ In the case of non-salaried officials or agents, the township meeting and the board must see to it that the sum paid out is paid in actual recompense for time worked, and for expenses actually incurred. Neither may vote a lump sum to a town official or agent for his estimated expenses for the coming year, in lieu of presentation of his claim for actual expenses incurred, which would be reimbursable on audit. Even if such expenses can be "averaged," and figured for the future, no recompense can be given except for expenses actually incurred and work actually done.⁵⁷ Public Acts 104, 1957, authorizes the board to fix the salary of the supervisor's clerk, and of not more than two assessors who help the supervisor with the assessing job.

State Distribution of Taxes

The township receives certain distributions of money from the state. By statute⁵⁸ and constitution⁵⁹ the township is entitled to share in the intangible personal property tax and sales taxes collected by the state. The distribution is done on a fixed formula, and according to the population of the township. The population figures used for this purpose are those of the township itself, exclusive of incorporated villages contained. Funds so received go to the general fund to be used for any proper township purpose.

Assessment of Taxes

The supervisor is the person charged with the assessment of property for tax purposes. The board may provide for the appointment of two assessors, to be subordinate to the supervisor. The supervisor is the proper keeper of the assessment rolls, and the assessors must deposit records with him. To assist the supervisor generally, the township meeting may provide for a clerk, who is to receive proper compensation, payable from the general fund.⁶⁰ No matter how desirable it might seem, neither the board nor the meeting has any power to provide for an administrative assistant, or for other officers, such as "township appraisers."⁶¹

Collection of Taxes; Settlement of Controversies

The supervisor must proceed to assess real property within the township, on reasonably objective standards, and must make up the assessment rolls upon which the tax is to be levied. Tax notices must be sent out to property owners and delinquent taxes must be followed up. The law provides strong measures to enable the treasurer to secure collection of taxes by foreclosure under tax lien. Where a good faith controversy rises over assessment or collection of taxes, the supervisor may make compromises and settlements, and these are binding upon the township.⁶² However, all taxes are presumed by the courts to be regular, and no tax or assessment is to be compromised or declared invalid unless there is a sound legal or constitutional basis for such action.⁶³

Where any order pertaining to taxes or other matters is to be signed by the members of the board, the signatures may be made separately at their convenience, and such signatures do not invalidate levies or assessments.⁶⁴ The supervisor may proceed to spread the tax on his rolls, as long as the constitutional and statutory limits are not exceeded,⁶⁵ and failure of the county board of supervisors to direct the levy will not invalidate his action.⁶⁶

Limitations on Taxes

The Michigan Constitution sets property tax limits,⁶⁷ and the property tax limitation act of 1933⁶⁸ provides for an over-all limitation on the amount so taxed, and for the division of the tax limit among local governmental units. By statute, the township is to be allowed a minimum of one mill by the allocation board. This is frequently interpreted to mean that the allocation boards may give the one mill to the township upon a showing by the township that it is in financial need, more so than either the county or the school districts. There is considerable doubt on this point, and several distinguished authorities on Michigan local government and finance are of the opinion that the statute should be interpreted to mean that the township is entitled to the one mill if it shows legitimate need,

and that it need not prove that it needs the one mill more than do the county or the school district. These same authorities state their view that above this first mill the township must show greater need than the other local units, if it is to be entitled to a larger allocation. The wording of the statute would seem to favor this latter view, but only an opinion of the state supreme court can settle the issue.

Local action is possible to increase the tax rate limitation by vote of the electors under a statutory provision.⁶⁹ Even where the amount so spread is greater than the amount voted by the meeting, the courts will presume that the increase was ordered by the township board, in the absence of evidence to the contrary.⁷⁰ All property is to be assessed equally, except that specifically exempted by statute. Even where certain types of property are so exempted, as in the case of railroad companies, the part of the property of the exempted business or utility, located in the township, which is not actually used in its ordinary business, is subject to taxation by the township in the normal fashion.⁷¹

Collection Expenses

Collection expenses are part of the normal expenses of the township, and are paid as such.⁷² Where certain unusual expenses are incurred in enabling the supervisor to carry out his duty of assessing, these may be approved by the township board as necessary expenses. So, for instance, where it was necessary for the township to employ a surveyor to establish precisely the north line of the township, where the exact location was in doubt, and the survey was necessary to enable the supervisor to assess property correctly, the expense involved was properly allowed by vote of the board,⁷³ and no action by the township meeting was required.

Footnotes

1. MCL 1948 s. 41.3, MSA s. 5.3.
2. MCL 1948 s. 41.131, MSA s. 5.161.
3. *Peninsula Iron and Lumber Co. v. Crystal Falls Tp.*, 1886, 60 M. 510, 27 N.W. 666; *Harding v. Bader*, 1889, 75 M. 316, 42 N.W. 942; *Gamble v. Stevens*, Aud. Gen., 1889, 78 M. 302, 44 N.W. 329; *Aud. Gen. v. McArthur*, 1891, 87 M. 457, 49 N.W. 592.
4. *Harding v. Bader*, footnote 3. See also other cases cited in footnote 3, *Newaygo County Mfg. Co. v. Echinaw*, 1890, 81 M. 416, 45 N.W. 1010, and *Tillotson v. Webber*, 1893, 96 M. 144, 55 N.W. 837.
5. *Newaygo County Mfg. Co. v. Echinaw*, footnote 4; *Garfield Tp. v. A. B. Klise Lumber Co.*, 1922, 219 M. 31, 188 N.W. 459; *Williams v. Mears*, 1886, 61 M. 86, 27 N.W. 863; *Sage v. Stevens*, Aud. Gen., 1888, 72 M. 638, 40 N.W.; *Rubatt v. Wakefield Tp.*, 1927, 239 M. 536, 215 N.W. 38.
6. *Garfield Tp. v. A. B. Klise Lumber Co.*, footnote 5.
7. *Lacey v. Davis*, 1856, 4 M. 140, 66 Am. Dec. 524.
8. *Op. Atty. Gen.* 1955, p. 32, no. 1704.
9. *Mills v. Richland Tp.*, 1888, 72 M. 100, 40 N.W. 183.

10. French v. S. Arm Tp., 1900, 122 M. 593, 81 N.W. 557.
11. Weston Lumber Co. v. Munising Tp., 1900, 123 M. 138, 82 N.W. 267; Chicago Lumbering Co. v. Munising Tp., 1900, 123 M. 138, 82 N.W. 267; Tillotson v. Webber, footnote 4; Aud. Gen. v. Duluth, S. Shore and Atl. Ry. Co., 1898, 116 M. 122, 74 N.W. 505.
12. Op. Atty. Gen. 1930-2, p. 30.
13. Upton v. Kennedy, 1877, 36 M. 215.
14. Power v. Gray, 1915, 186 M. 646, 153 N.W. 37; Power v. Balitz, 1915, 186 M. 652, 153 N.W. 39.
15. Mills v. Richland Tp., footnote 9.
16. Hanslovsky v. Leland Tp., 1937, 281 M. 652, 275 N.W. 720.
17. Ryeson v. Laketon Tp., 1884, 52 M. 509, 18 N.W. 241; Mich. Land and Iron Co. v. L'Anse Tp., 1886, 63 M. 700, 30 N.W. 331.
18. MCL 1948 s. 24.35, MSA s. 4.353.
19. Tweed v. Metcalf, 1857, 4 M. 579.
20. Op. Atty. Gen. 1919, p. 107.
21. Op. Atty. Gen. 1921-22, p. 246; 1941-42, p. 5, no. 16640.
22. Op. Atty. Gen. 1941-42, p. 146, no. 19903.
23. Op. Atty. Gen. 1941-42, p. 303, no. 20941.
24. Op. Atty. Gen. 1943-44, p. 283, no. 0-150.
25. Op. Atty. Gen. 1952-54, p. 363, no. 1797.
26. Op. Atty. Gen. 1947-48, p. 574, no. 694.
27. Op. Atty. Gen. 1955, p. 210, no. 2045.
28. Op. Atty. Gen. 1921-22, p. 246.
29. McFarlan v. Cedar Creek Tp., 1892, 93 M. 558, 53 N.W. 782.
30. Op. Atty. Gen. 1935-36, p. 209.
31. Op. Atty. Gen. 1935-36, p. 143; 1939-40, p. 88.
32. City of Berkley v. Royal Oak Tp., 1948, 320 M. 597, 31 N.W. 2d 825.
33. Op. Atty. Gen. 1941-42, p. 16, no. 17028.
34. Op. Atty. Gen. 1949-50, p. 418, no. 1121.
35. Op. Atty. Gen. 1942-54, p. 215, no. 1706.
36. Op. Atty. Gen. 1955, p. 216, 2057.
37. Robertson, Drain Comr. v. Baxter, 1885, 57 M. 127, 23 N.W. 711.
38. Dearborn Tp. v. City of Dearborn, 1944, 308 M. 284, 13 N.W. 2d 821.
39. For information on this point, see Royal Oak Tp. v. City of Berkley, 1944, 309 M. 572, 16 N.W. 2d 83; City of Berkley v. Royal Oak Tp., footnote 32; Royal Oak Tp. v. City of Huntington Woods, 1945, 313 M. 137, 20 N.W. 2d 840.
40. Marathon Tp. v. Oregon Tp., 1860, 8 M. 372; Pierson Tp. v. Reynolds Tp. Bd., 1882, 49 M. 224, 13 N.W. 525; Grant Tp. v. Reno Tp., 1895, 107 M. 409, 65 N.W. 376.
41. Comins Tp. v. Harrisville Tp., 1881, 45 M. 442, 8 N.W. 44. See also Midland Tp. v. Roscommon Tp., 1878, 39 M. 424.
42. Gladwin Tp. v. Bourrett Tp., 1902, 131 M. 353, 91 N.W. 618.
43. Same as footnote 42.
44. Op. Atty. Gen. 1951-52, p. 320, no. 1431.
45. Same as footnote 44, and Op. Atty. Gen. 1955, p. 696, no. 2125.
46. MCL 1948 s. 41.95, MSA s. 5.82.
47. Hawkins v. Voisine, 1940, 292 M. 357, 290 N.W. 827.
48. Op. Atty. Gen. 1939-40, p. 186; 1943-44, p. 724, no. 0-2144; and see footnotes 44 and 45.
49. Op. Atty. Gen. 1951-52, p. 320, no. 1431.
50. Op. Atty. Gen. 1913, p. 568.
51. Op. Atty. Gen. 1920, p. 61.
52. Op. Atty. Gen. 1921-22, p. 388.
53. Op. Atty. Gen. 1933-34, p. 241.

54. *People ex rel. Decatur Village v. Decatur Tp. Bd.*, 1876, 33 M. 335.
55. MCL 1948 s. 41.96, MSA s. 5.83.
56. See, for instance, *Sawyer-Goodman Co. v. Crystal Falls Tp.*, 1885, 56 M. 597, 23 N.W. 334; *Peninsula Iron and Lumber Co. v. Crystal Falls Tp.*, 1886, 60 M. 27 N.W. 666.
57. *Op. Atty. Gen.*, 1955, p. 325, no. 2091.
58. MCL 1948 s. 205.136, MSA s. 7.556 (6).
59. *Mich. Const. 1908, Art. X, s. 23.*
60. MCL 1948 s. 41.61, MSA s. 5.52.
61. Same as footnote 57.
62. *Feily v. Bay View Campgd. Assn. of M.E. Church*, 1920, 210 M. 197, 177 N.W. 485.
63. MCL 1948 s. 211.99, MSA s. 7.153.
64. Same as footnote 63.
65. *Kelsey v. Burns Tp.*, 1923, 223 M. 173, 193 N.W. 822.
66. *Upton v. Kennedy*, 1877, 36 M. 215.
67. *Mich. Const. 1908, Art. X, s. 21.*
68. MCL 1948 ss. 211.201 - 211.217, MSA ss. 7.61 - 7.77.
69. MCL 1948 s. 211.203, MSA s. 7.63.
70. *Silsbee v. Stockle*, 1880, 44 M. 561, 7 N.W. 160.
71. MCL 1948 s. 207.5, MSA s. 7.255.
72. *Bailey v. Haywood*, 1888, 70 M. 188, 38 N.W. 209.
73. *McGaughan v. W. Bloomfield Tp.*, 1934, 268 M. 553, 256 N.W. 545.

CHAPTER 5

Bonding, Borrowing and Bidding

Borrowing; Municipal Finance Act; Bond Houses; Practical Considerations and Procedures

As indicated in Chapter 10, the township may borrow for certain short-term purposes, and may issue the warrants or obligations of the township in return. The money may be borrowed from a local bank or a private person, but only within the limits set. Under the Municipal Finance Act,¹ townships now must clear all borrowings with the Municipal Finance Commission, and it seems clear that the act applies as well to these short-term borrowings as to long-term ones. Where the township finds it desirable to borrow on a long-term basis, members of the board must consider the municipal bond market.

If the loan is for a small amount, and a short time, probably a local lender can meet the need and perhaps a local attorney or financial adviser, together with the Municipal Finance Commission can give the board the necessary assistance. However, if the bond issue is of such size as to require something more than the local market, specialized assistance becomes almost essential. Generally a bond issue cannot be marketed unless it has the favorable written opinion of an attorney who specializes in municipal bonds. In order to conduct the procedure in such a way as to make possible that favorable opinion, the attorney often requires that he himself supervise every step taken from the beginning, or that a financial adviser specializing in municipal bonds be on the job. This means some expense but not as much as it will mean if the township finds at the time of expected sale that the bonds cannot be sold due to a mistake in procedure. Even on such questions as to length of time bonds are to run, how much of the debt is to fall due, and type of financing, the advice of a specialist should be sought.

Types of Borrowing; Full Faith and Credit Bonds; Revenue Bonds; Tax Anticipation Bonds or Notes

Generally speaking, full faith and credit bonds of the township may be issued only following a vote of the electors approving such issue. Due to the lower interest rates, they may be the most desirable bonds for a township to issue. There are some exceptions to the rule that they may be

issued only following the vote of the electors. For instance, the drain assessment at large on the township may be funded by general obligation bonds of the township by action of the board, and without a vote of the electors, Public Acts 128, 1957. Another exception is found in the 1957 legislation dealing with blighted areas, Public Acts 296 and 298, 1957.

Revenue bonds under the Revenue Bond Act of 1933, as amended, may be issued by the township board without a vote of the electors in order to raise money for certain public improvements, generally connected with water supply or sewers. These bonds are subject to the approval of the Municipal Finance Commission and the statutory provisions must be carefully followed. The bonds must be serialied, payable annually or semi-annually, with the first payment not more than five years ahead, and the last payment scheduled not later than the end of the usefulness of the improvement, and in no event more than forty years in the future.²

The board may borrow in anticipation of taxes in certain instances. If the township, for instance, becomes a part of a municipal authority organized to handle sewage and water supply problems, the board may irrevocably pledge up to and including 25 percent of the sales tax money that will be coming to the township to secure the performance of its obligations to such authority, Public Acts 299, 1957, and may pledge future sales taxes for highway improvement purposes, Public Acts 111, 1956.

Revenue Bond Act of 1933; Power to Erect Public Facilities; Public Utilities

Under the Revenue Bond Act of 1933, as amended through 1954,³ the township may undertake extensive public improvements and may issue bonds to finance them. Permission is given to construct, extend, repair, and so on, township housing facilities, garbage disposal plants, incinerators, transportation systems, sewage disposal systems, water supply systems, existing utility systems of all sorts in towns less than 160,000 in population, automobile parking facilities, yacht basins, harbors, docks, wharves, terminal facilities for public transportation, elevated highways, bridges, tunnels, ferries, community buildings, stadiums, convention halls, auditoriums, dormitories, hospitals, other public buildings, parks and recreation facilities, reforestation projection projects, aeronautical facilities and marine railways. The township may maintain such facilities within or outside its own boundaries, subject to the legal rights of other local government units. Under the 1954 amendment, the township may acquire any public utility for the supplying of light, heat or power upon the affirmative vote of three-fifths of its electors at meeting or polls.⁴

The act provides that even if bonds are not contemplated or issued, nevertheless the townships have the powers listed. The act would appear

to have ended previous restrictions which prevented townships from undertaking public projects, though not the earlier prohibitions against townships acquiring telephone or telegraph service by purchase. The act allows the township board to proceed alone with no need to secure the approval of the voters except where newly purchasing a utility.

The statute appears to give these powers without restriction; however, some authorities on Michigan local government are of the opinion there must be legislative authority for a township to undertake any of these projects. They point out that in several instances since the revision of the statute in 1954, the legislature has acted to grant authority on items listed in the Revenue Bond Act, or to refuse permission to townships for projects similar to those named in the act. It is their opinion that authority must be found in some other statute before any action may be taken under the Revenue Bond Act.

Limitations on Power to Borrow

Where the legislature has not given permission, the board has no power to act. For instance, the board cannot borrow to pay the school district the money which it owes.⁵ Where the legislature has given permission to the board to borrow money or transfer funds, it may do so. Thus, where the township has an assessed valuation of one million dollars or more, the township may by resolution borrow the amount necessary to pay the county treasurer any deficiency in the amount of a special assessment levied for highway or drain purposes and assessed against the township at large. The amount so borrowed is not to exceed the total of the special assessments returned delinquent.⁶ Where the meeting has authorized certain taxes, and these taxes are delinquent, the board may issue "orders" bearing interest at 6 percent or less per year.⁷ Where the legislature has so provided, the board may advance the money necessary to pay special assessment bonds where the special assessment fund is insufficient.⁸

Consideration of Bids on Public Projects

The township board may inquire into the financial solvency of any bidder, and into his ability to perform the contract. It may require a prospective bidder to submit a sworn statement of his qualifications, to be filed at least ten days before bids are opened. In considering bidders, the board may consider past performance on similar contracts, equipment and facilities, and other relevant information. Any person found to be unqualified must be notified in writing at least five days before the opening of the bids. Where a great deal of work is to be done, the board may list the prospective bidders according to equipment, experience, and resources, and may give out plans, specifications, and the like, and receive bids accordingly. The questionnaire must be kept confidential, and boards which

act in good faith are protected against legal action instituted by a disappointed contractor.⁹

Protection of Subcontractors and Materialmen Required

The board must require sufficient security from the contractor who is awarded the contract to assure payment of all subcontractors, laborers, and supply and materialmen.¹⁰ Members of the township board who fail to require a sufficient bond from the contractor are personally liable to the laborers, materialmen, and others injured thereby.¹¹ This means that the members of the board have to pay out of their own pockets to make up the necessary amount not covered by bond.

Footnotes

1. MCL 1948 ss. 131.1-138.2, MSA s. 5.3188.
2. MCL 1948 s. 141.107, MSA s. 5.2737, and see MCL 1948 s. 41.414, MSA s. 5.2414 limiting special assessments for particular purposes.
3. MCL 1948 ss. 141.101-141.136, MSA ss. 5.2731-5.2766.
4. MCL 1948 s. 141.104, MSA s. 5.2734.
5. Op. Atty. Gen. 1928-30, p. 878.
6. MCL 1948 s. 41.141, MSA s. 5.171.
7. MCL 1948 s. 41.151, MSA s. 5.181.
8. See note 6, and also *City of Highland Park v. Dearborn Tp.*, 1938, 285 M. 440, 280 N.W. 820.
9. MCL 1948 ss. 123.501-123.508, MSA ss. 5.2311-5.2318.
10. MCL 1948 ss. 570.101-570.105, MSA ss. 26.321-26.325.
11. *Lake Shore Stone Co. v. Westgate*, 1920, 211 M. 540, 179 N.W. 264.

CHAPTER 6

The Duty to Account for Public Funds, Bonding of Officers, and Handling Surplus Funds

Treasurer's Annual Report; Examination of Records; Auditing and Settling Claims

The township treasurer must account in detail to the township board for his handling of the public funds. His report must be presented to the board on the Tuesday next preceding the annual meeting.¹ At the annual meeting, the township must examine and audit the accounts of the treasurer in detail, and must also examine in a similar fashion the accounts of any other township officer charged with receiving or disbursing public moneys. The board must also examine the keeping of the public records, and see to it that such records are kept in good form and in a safe place.²

Settlement Day

The board must meet annually on the second Tuesday next preceding the annual meeting, commonly called Settlement Day, for the purpose of auditing and settling all claims against the township. After considering the claims presented, the board must make a formal record of the fact of settling each claim, and on each claim the board must state the amount allowed by it, if such allowance is made. The amounts so allowed are to be paid by the treasurer upon the formal order of the board, signed by the township clerk and countersigned by the chairman of the board.³ Further details about the settlement of claims may be found in Chapter 12 on Legal and Constitutional Affairs.

Formal Requirements for Accounts to be Audited; Warning to Board Members; Attorney General's Audit

The accounts to be audited must be written, itemized, and sworn to by the claimant. Accounts so audited are to be kept available for public inspection by the clerk, and are to be produced and read by the clerk at the next annual meeting if the meeting so wishes.⁴ Accounts audited are looked into for the protection of the public. Even though the board may accept the accounts as stated as a full statement of the accounts of the particular official, and approve them, nevertheless, if any error is later found, the township may proceed against the official for any sum owing. In legal terms, there is no estoppel of the township by action of the board

in settling accounts.⁵ Board members may be held liable themselves for improper handling of town funds where they are negligent in their duty of checking officials who handle money.

In addition to this yearly audit, the attorney general of the state has power to examine and audit township accounts, if he is asked to do so in a written request signed by 25 percent of the electors. This request must state in detail the reasons for the proposed audit. If the attorney general deems it proper, he may proceed himself or through his agents to examine the financial affairs of the township.⁶ All board members are specifically required by statute to cooperate, and failure to do so is a misdemeanor.⁷ Fifty percent of the expense of this investigation is to be borne by the township, and must be paid from the contingent fund.

Annual Report on Township Funds; Publication

In addition to the auditing procedures described above, the board must publish annually an itemized statement of the amount of money in the hands of the treasurer by specific funds, the amount and source of all money owed by and to the township, and the fund to which charged or credited, all bills audited and allowed by them, all disbursements in detail, and the fund from which paid, and the balance of money remaining to the township and the amount in each fund.⁸ At least six copies of the statement must be distributed and another six posted prominently in public places for at least ten days prior to every annual township meeting. The board may order publication in a local newspaper if it wishes, but it is not required to do so.⁹ The statement must be itemized in full detail, and no summary or excerpt fills the statutory requirement.¹⁰

In practice, the sequence is as follows: the treasurer balances and closes his books, makes out a full report on the basis of these books, arranges with the supervisor to have the report printed and posted before the meeting, then makes his report to the board and to the assembled electors at the meeting himself, holding himself ready to explain his accounts in any detail, and also to answer proper questions. The board must scrutinize the report thus presented, and approve or reject it. If the report is rejected, the board must state upon what grounds it is rejected, and what funds are in question. If the matter cannot be settled in conference, the township must seek redress in legal suit against the treasurer or his sureties.

The township board must allow from the general fund the expense of printing the report and making the audit.¹¹ Failure to do so is a misdemeanor, and any board member failing to vote in approval of such a charge is guilty of a misdemeanor, and may be fined up to twenty-five dollars, sent to jail for up to thirty days, or both, upon the complaint of any taxpayer of the township.¹²

Handling of Surplus Funds

By statute, the board may provide at the annual meeting for transferral of any unexpended balance in any special township fund to the contingent fund, providing all claims against such funds are first satisfied. The published annual statement must show such transfers.¹³ Outstanding bonds, even where not presently due, are a claim against any fund, and that fund may not be transferred.¹⁴ The township may also invest surplus funds in Home Owners' Loan Corporation bonds, or in bonds of any federal home loan bank,¹⁵ or in any U.S. bonds or obligations.¹⁶ The electors, by majority vote, may transfer any unexpended balance in the "general" or contingent fund to their county. They may designate a specific use for the funds, which the board of supervisors must respect if it wishes to use the funds, or the electors may transfer the funds without any limitation. If they act in this last way, the board of supervisors may use the funds as they think best.¹⁷ Funds may not be transferred except as allowed by statute, and such transfers as one in which money was voted to the county road commissioner to create a county overnight camp are void.¹⁸

Bonding of Township Officers

Certain officers of the township, such as the clerk and the treasurer, must be bonded according to statute. The nature and extent of the bond is not stated definitely in the statutes, but such bonds are to be reasonably proportioned to the extent of the public funds under the control of the official, or to the value of the records or other facilities under his control. For instance, in the case of the township clerk, the board must set the amount of the bond and the number of the sureties required of the township clerk each year within the thirty days just before the annual township election.¹⁹ This is in line with the statutory duty of the board to see that proper township records are kept and preserved.²⁰

Where a township officer is required by law to give bond, the board may authorize the officer by resolution of a majority of the members to procure the bond from an authorized surety company, and may pay the cost of the bond from the contingent fund, but not exceeding 1 percent of the face value of the bond every year.²¹ Such action is optional on the part of the board, and an officer cannot compel the board to bear the cost of his bond. Where the sureties on the treasurer's bond become insolvent, or move out of the county, or if the board deems the bond insufficient for any reason, the board may require the treasurer to provide a new bond with additional sureties.²²

Of course, while bonding other officials may seem desirable, the vital question of bonding on the township level concerns the bonding of the treasurer. The treasurer must be bonded,²³ but there has arisen often in

Michigan history the situation in which, through no fault of his own, the treasurer has lost, mislaid, or had stolen from him the funds entrusted to him. Boards have been reluctant to press the treasurer or his sureties on the bond. However, under the statutes and the court decisions, they have no choice. The board cannot release the treasurer from paying the full amount which he owes to the treasury, except where a genuine disputed claim exists, and his sureties may not be released either.²⁴

Nature of the Treasurer's Duty to Keep Funds Safe

The public funds in the hands of the treasurer or included in the tax rolls given him for collection are in the nature of a trust,²⁵ and the treasurer must account either in money or in a return of unpaid taxes.²⁶ The treasurer is the appointed agent of the township to collect taxes, retain them, and pay them out on proper order.²⁷ While earlier decisions held him a mere debtor of the township,²⁸ later decisions are unanimous that he owes the highest type of honor and fair-dealing to the township in the handling of such funds.²⁹ The treasurer must have money in hand at all times ready to pay out or pay over, and failure to produce the money on demand of proper officers is conversion, and the town may recover the money, plus damages, from the treasurer in a court suit.³⁰ Interest on the funds in the hands of the treasurer belongs to the township, and must be paid into the general fund if the treasurer receives such interest from any source.³¹ The township board may not release the treasurer or his sureties for money lost by him through his carelessness,³² nor for money stolen from him, even with the permission of the legislature or with the consent of a majority of the taxpayers in the county,³³ even though by statute all losses sustained by the default of any township officer are chargeable to the township.³⁴

Designation of Depository Banks; Limit on Amount Deposited

Since the treasurer is held to such a high standard of accountability, the legislature has attempted in some ways to mitigate the burden. For instance, under several different statutes,³⁵ the board is required to designate a depository bank or banks by resolution, for the deposit of public funds. The board may designate the bank or banks, and may limit the amount to be placed in each one. Such designation of depositories is to continue in effect until a new depository is designated in the same fashion. This appears to be the rule under MCL 1948 s. 211.43b, MSA s. 7.86, the latest legislative pronouncement on the point, despite earlier rulings and court decisions to the contrary.³⁶ The treasurer may compel the board to designate such a depository.³⁷ Once the depository is designated, the treasurer is absolutely relieved of liability when he deposits all funds therein, even if the bank fails.³⁸ The treasurer must deposit the township funds and has no choice in the matter;³⁹ hence the willingness of courts

and legislature to free him from responsibility. The board must determine all details of such deposits, and all proceedings and records must be available to the public. The bank must be within the county.⁴⁰ The protection thus given the treasurer is absolute, and it makes no difference that he may have an interest in the bank so designated.⁴¹

Footnotes

1. MCL 1948 s. 41.79, MSA s. 5.71.
2. MCL 1948 s. 41.73, MSA s. 5.65.
3. MCL 1948 s. 41.72, 41.72a, MSA s. 5.64.
4. MCL 1948 s. 41.75, MSA s. 5.67.
5. Boardman Tp. v. Flagg, 1888, 70 M. 372, 38 N.W. 284.
6. MCL 1948 ss. 14.141-14.145, MSA ss. 3.241-3.245.
7. MCL 1948 s. 14.142, MSA s. 3.242.
8. MCL 1948 s. 41.171, MSA s. 5.111.
9. Op. Atty. Gen. 1912, p. 339; 1926-28, p. 314.
10. Op. Atty. Gen. 1899, pp. 83, 98.
11. MCL 1948 s. 41.172, MSA s. 5.112.
12. MCL 1948 s. 41.173, MSA s. 5.113.
13. MCL 1948 s. 41.161, MSA s. 5.115; Op. Atty. Gen. 1937-38, p. 238.
14. MCL 1948 s. 41.163, MSA s. 5.117.
15. MCL 1948 ss. 129.81-129.83, MSA ss. 3.841-3.843.
16. MCL 1948 ss. 129.91-129.93, MSA ss. 3.843 (1)-(3).
17. MCL 1948 s. 141, 351-141 352, MSA ss. 5.1195 (1)-(2).
18. Op. Atty. Gen. 1949-50, p. 89, no. 871.
19. MCL 1948 s. 41.73, MSA s. 5.65.
20. Same as footnote 19.
21. MCL 1948 s. 41.601, MSA s. 5.131.
22. Op. Atty. Gen. 1926-28, p. 696.
23. MCL 1948 s. 41.612, MSA s. 5.142.
24. Oswego Lake Tp. v. Kirsten, 1888, 72 M. 1, 40 N.W. 26, 16 Am. St. R. 524.
25. Amer. Employers Ins. Co. v. Maynard, 1929, 247 M. 638, 226 N.W. 686; Brady Tp. v. Maynard, 1929, 247 M. 638, 226 N.W. 686; Sanilac County v. Burgess, 1933, 265 M. 177, 251 N.W. 384; City of Roosevelt Park v. Norton Tp. 1951, 330 M. 270, 47 N.W. 2d 605.
26. City of Oceana v. Hart Tp. Supervisor, 1882, 48 M. 319, 12 N.W. 190.
27. Byles v. Golden Tp. 1884, 52 M. 612, 18 N.W. 383.
28. Monroe Tp. v. Whipple, 1885, 56 M. 516, 23 N.W. 202.
29. Same as footnote 25.
30. Monroe Tp. v. Whipple, note 28.
31. MCL 1948 s. 41.77, MSA s. 5.69, Op. Atty. Gen. 1913, p. 421; 1921-22, p. 364.
32. Op. Atty. Gen. 1913, p. 452.
33. Bristol v. Johnson, 1876, 34 M. 123.
34. MCL 1948 s. 211.91, MSA s. 7.146.
35. MCL 1948 s. 211.43b, 129.12, 41.77, MSA s. 7.86, 3.752, 5.69.
36. Sanilac County v. Burgess, footnote 25.
37. Op. Atty. Gen. 1933-34, p. 102.
38. Van Buren County v. Sprague, 1935, 272 M. 618, 262 N.W. 313.
39. MCL 1948 s. 41.77, MSA s. 5.69; Sanilac County v. Burgess, footnote 25.
40. Reichert v. Lochmoor State Bank, 1935, 272 M. 433, 262 N.W. 386; Op. Atty. Gen. 1913, p. 421.
41. Op. Atty. Gen. 1914, p. 704. See Op. Atty. Gen. 1923-24, p. 167, but see also Op. Atty. Gen. 1926-28, p. 129.

CHAPTER 7

Health, Welfare, Recreation and Cemeteries

General Powers

Under the statutes giving township boards general ordinance-making powers, the board is empowered to act regarding health, fire, police, traffic, parking, and sidewalk maintenance and repair, and to provide penalties for violation of ordinances.¹ Some of these matters will be discussed later in the chapter on police and fire. Ordinances may apply to any area within the township, whether or not devoted to public use. Township boards may accept money from representatives of platted lands to defray administrative and enforcement costs within the platted area.² Thus, no matter how "private" or "exclusive," a portion of the township cannot be free from the township's ordinance-making powers.

Housing; Trailer Camps

As a local housing authority under state law, townships are empowered to provide temporary housing for servicemen and veterans and their families within the provisions of national laws.³ Townships may also acquire, operate, maintain and dispose of any existing temporary housing project of the United States government. Temporary housing so acquired must be demolished by July 1, 1960, under Public Acts 16, 1957. The township may designate its housing commissioner as its agent in operation of the housing project. Township boards also have the right to regulate trailers, trailer camps, and occupancy of house trailers while the trailers are located more or less permanently within the township.⁴ However, neither the board nor the electors has any authority to pass an ordinance governing use of trailers on township roads.⁵

Hospital Authorities; Methods of Financing

Two or more townships, cities, or incorporated villages may jointly incorporate an authority to plan, build, and administer one or more community hospitals.⁶ The proper procedure for a particular township is to secure a resolution by the township board followed by approval of electors.⁷ Revenue bonds may be issued, whether the hospital is located in or out of the township itself. Once organized, the hospital board may request up to four-tenths of a mill on assessed valuation from each member township annually. Such sum may be pledged by the hospital authority for repayment of revenue bonds. If a hospital authority is already in existence,

the township may join, if a resolution to that effect passes the township board, a majority vote of the electors is secured, and the hospital board approves. If a township wishes to withdraw from the hospital authority, it may be released by resolution of the township board followed by an acceptance by the authority. The township meeting may pay money to a hospital from contingent funds. Such sums of money should represent a reasonable share of the expenses of the hospital, if its facilities are made available to residents of the township at standard rates. But the hospital must agree to admit an agreed number of township residents a year to become eligible for such funds.⁸

Board of Health; Township Health Officer; Township Nurse; Transfer of Functions to County or District Health Units

The township board, acting as the township board of health, is directed by statute to meet within thirty days after the annual township meeting to transact business and to appoint a qualified physician as township health officer. The board must send the name of the person selected to the State Board of Health.⁹ A health officer must be appointed even though the township board feels the township has no need for one.¹⁰ Where it is not practicable to secure a physician, the board may appoint the board supervisor or other proper person to the post.¹¹ There is no legal objection to appointment of an osteopath as health officer,¹² or to the naming of a non-physician who may then hire a physician as necessary.¹³ The board determines the health officer's salary and regulates and audits any fees and charges made by the official.¹⁴ Any health regulations made must be publicized.¹⁵ At any township meeting, the electors may vote money to hire a public nurse or nurses for the township. After such vote, the township board may contract or provide for such services, either on a full- or part-time basis, or for special events. The township board may join with other townships or municipalities to hire a nurse or nurses for their common benefit.¹⁶

It should be pointed out that though the townships still retain this authority in matters of public health, yet as a practical matter, most health matters are now handled by county or district health units. It is rare to find a township board functioning in health matters aside from control of cemeteries, township dumps and nuisance matters. The same is true of the public health nurse, who is now almost everywhere a county nurse.

Nuisances; Health Menaces

Any member of the township board may secure a warrant from a justice of the peace if necessary for health inspection of any premises.¹⁷ In an emergency, strong measures are allowed. These extend to seizing and re-

moving persons or taking possession of lodgings or other offensive premises on order of two justices of the peace. With a warrant issued by one justice of the peace, the board member may seize and sequester goods, break into any building and search storage rooms and houses.¹⁸ When a nuisance, source of filth, or cause of disease is found, the board may order the owner or occupant either to remove it within twenty-four hours, or suffer a penalty of one hundred dollars.¹⁹ After lapse of the time allowed in the order, the board may remove the offending thing, and charge the cost to the owner. If the owner refuses to pay, the sum must be levied and collected as a tax, and foreclosure under tax lien may be made. A tenant or occupant who causes a nuisance is liable in turn to the owner of the property.²⁰ The board cannot enact an ordinance providing for the licensing of juke boxes, pinball machines, and similar devices.²¹

Dangerous or Offensive Industry

The township board has the power to assign a set place for the practice of any trades which might be considered public health nuisances, or offensive or dangerous to the inhabitants and to forbid their practice elsewhere.²² These include piggeries,²³ slaughterhouses and garbage incinerators.²⁴ The board can refuse to assign a place for the trade and can forbid its exercise within the township according to both the Michigan Supreme Court²⁵ and the attorney general.²⁶ Even though an area assignment has been made, it can be revoked by the board.²⁷

Park and Recreation Land; the Township Park Commission

Early court decisions hearkened back to the law and custom of New England townships to find authority for Michigan township boards to lay out and purchase park land and commons, even though in one such case the purchase of the park land meant the inclusion of a village within the township limits.²⁸ Under the present-day statutes, the township board is required to appoint a township park commission of six members on receipt of a petition signed by fifty freeholders and taxpayers of the township requiring such action. This appointment must be made at the first meeting of the township board after it receives the petition.²⁹

Park Commission Budget; Financing

The park commission must provide a detailed budget to the township board, such budget not to exceed one and a half mills on the township's assessed valuation. The township board is to review and approve part or all of the budget and then incorporate it into the township tax.³⁰ The park commission may also submit a bond proposal directly to the township meeting. If approved by a three-fifths vote, such bonds may be issued under Act 202, Public Acts 1943. If the township has no indebtedness, the annual township meeting may authorize and direct the park commission

to purchase suitable park lands, and may direct the township board to pay annually to the park commission such available portions of the township contingency funds as may be necessary for such land. The votes must specify the maximum amount to be paid for the land and terms of purchase if condemnation procedure is not used.³¹ If portions of the park lands so purchased prove to be unneeded, the township park commission may sell them with approval of the township board.³² At the annual meeting of the township board, the township park commission must make a detailed annual report on parks and recreation places.³³

Acquisition of Recreation Area; Rules and Regulations; Superintendent of Recreation

The township park commission may acquire bathing beaches and other recreation places.³⁴ Adjacent townships may join to purchase and run parks, recreation places, or beaches. When only one township acts, the township board acts as the board of park commissioners in the absence of a petition by the electors, as above. But if two or more townships join together, the supervisors of each are to form a board of park commissioners.³⁵ The board of park commissioners may adopt rules and regulations, including hours at which the facilities are to be open, and may make leases for buildings. However, state law forbids the selling of alcoholic beverages on township park premises.³⁶ Cities and villages may contribute to the cost of township park or beach facilities.³⁷

Townships are empowered to operate playgrounds and other recreation areas, and may employ a superintendent of recreation.³⁸ Such activities are a governmental function, which means that the township is not liable if a person is injured on the recreational area.³⁹ Townships can join with other units of local government to operate recreational systems and playgrounds, or cooperate in any manner mutually agreeable. If they wish, any or all of them may set up a recreation board and appropriate money to that board for recreation purposes.⁴⁰ Recreation areas may be located anywhere within or outside the township.⁴¹

Township Community Center; Public Docks

Townships having a population up to ten thousand, can build and maintain a community center. The required procedure is a petition by 10 per cent of the voters presented to the township board, and followed by a referendum. Expenditures for a community center may be up to and including two mills on assessed valuation. The township board appoints six directors of the community center and fills vacancies as they arise. The directors serve without salary. The center must be free for use by the public. If the township decides to relinquish the community center, it must be done by the same procedure as the adoption of the center: *i.e.*, petition by 10 per cent of the voters to the board, followed by a referendum

on the issue.⁴² The township may also operate a youth center.⁴³ It may lease or acquire and operate piers, docks and the like for public use if such step is approved by a three-fifths vote of the electors at the annual meeting or at a special election.⁴⁴

Forestry Operations

The township board may also acquire or use land already in its possession for forestry purposes, and may receive and spend funds in trust for such purposes. The board may appoint a forestry commission with not more than one township board member. It may acquire lands from the state, to be used solely for forestry purposes, and to revert to the state when not used for forest. The income from forests may be paid into the township's general fund or into a special forestry fund. The forests may be located either within or outside the township.⁴⁵

War Memorials

The township may own or acquire land by gift or purchase for erection of memorials to soldiers and sailors. The memorial may be also a museum, library, auditorium, park or other suitable institution, by decision of the township board. The statutory procedure is for one hundred electors to present a petition, calling for a war memorial, to the township clerk. This must then be followed by a referendum of voters. The township board may levy a tax for the memorial, in addition to the other taxes, but cannot exceed the legal tax limit. The township board has custody, management and control of such memorials.⁴⁶

Cemeteries

The township board must care for all cemeteries within the township, except private ones or those owned by a village or city. The township board may contribute to maintenance and care of a cemetery owned by a city or village within its borders, and a city or village may contribute to a township cemetery. Such costs are to be paid from the general fund or contingent fund. The township treasurer can accept deposits of money up to \$500 from a person for care of a specific lot in the cemetery, and the township board must then supervise expenditure of the money so deposited.⁴⁷ The township board not only has an absolute duty to see that all public cemeteries are taken care of properly, but under a 1952 statute there is no limit on expenditures for this purpose.⁴⁸

Under certain circumstances, a township board of health may take over privately owned and neglected cemeteries and make township cemeteries of them, but it may never legally contribute to the maintenance and care of a privately owned cemetery. In this area, as in other similar areas, the legislature has given the township boards authority to operate a cemetery

jointly, or for one to contribute to the maintenance and care of a cemetery owned by another township in return for mutual use. Two or more boards may act to this effect, even where the townships concerned are located in different counties.⁴⁹

The third Wednesday in August of each year is designated "cemetery day" and township boards must direct the manner of making cemetery improvements on that day.⁵⁰ Actual administration of the cemeteries is by the township board, sitting as the township board of health. The township board of health may acquire new burial ground or extend old cemetery limits as desirable and necessary, and may provide suitable approaches to the cemeteries. In so acting, the health board may either purchase or condemn land.⁵¹ The township board may sell burial land where it is unoccupied. But if the plot is already occupied by a grave or monument, the board may only sell after petitioning a circuit court and receiving a court order empowering it to do so.⁵²

Perpetual Care; Sale of Burial Plots

Any township board by resolution or ordinance may provide that it shall be bound to give perpetual care to a public cemetery lot, upon proper payment by the owner.⁵³ Acting as trustee, the township board of health may hold any money, income or property to be spent for upkeep of a part of a cemetery or all of it.⁵⁴ The township board of health may sell cemetery lots at a fair price to all; but cannot give away some free and require money for others.⁵⁵ Purchase of a cemetery lot generally means only purchase of the right to bury a person there, not purchase of the ownership of the land itself.⁵⁶ A few townships say that they sell the land itself, but this is unusual, and the power of a board to do so is questionable. Monies received from sale of lots in any one cemetery must be used exclusively for maintenance of that one cemetery, and funds from two or more cemeteries may not be mixed. The township board may set up a trust fund for each cemetery. The cemetery must be mapped, and plots laid out before lots may be sold. The township board of health may fence cemeteries as necessary.⁵⁷

Removal of Cemeteries

Ten residents may file a petition with the township board of health asking removal of a private cemetery because of neglect or abandonment by its owners, as a nuisance or a hindrance to the growth of a city or village, or as a health menace. In such case the township board must take the proper steps to begin proceedings for vacating the cemetery in the circuit court in chancery of the county. The township bears all costs of the proceedings and the subsequent removal of the cemetery.⁵⁸

Other Powers of the Board Relating to Health and Welfare; Quarantine; Employment of Attorney; Dumps

Miscellaneous provisions of the statutes relating to health and general welfare empower township boards to act in varied specialized situations. For instance, a township may establish suitable quarantine grounds within or outside its limits, provided that any other townships included within the quarantine limits approve. Two or more townships may join to establish a quarantine area.⁵⁹ Lake townships also have the power to provide quarantine regulations for lake boats which dock.⁶⁰ Under Public Acts 51, 1956, the township board may employ an attorney for proper purposes.⁶¹ A growing problem, especially in those townships with expanding population, is the regulation and establishment of township dumps and similar waste disposal facilities. The authority to provide for garbage and waste disposal lies with the township board of health.

Animal Diseases; Insect Plagues

In certain situations, townships have the power to act to halt outbreak of specified animal diseases or insect pests. After an earlier opinion by the attorney general forbade use of township funds to buy hog cholera serum,⁶² a statute was passed, still in effect, extending such power.⁶³ But a 1916 ruling still holds that the township has no authority to require that all cattle be tuberculin tested, since this power is in the hands of a state commission.⁶⁴ The township board may appropriate money to exterminate grasshoppers. However, the county board must first have approved such action and appropriated money for poison or other means of extermination. Any money spent by the township to fight the insects is to be treated as a general township expense.⁶⁵

Footnotes

1. MCL 1948 s. 41.181, MSA s. 5.45. (1).
2. Same as footnote 1.
3. MCL 1948 ss. 125.871, 125.872, MSA ss. 4.1484 (1) and (2); P.L. 849, 76th Cong., as amended, and especially as amended by P.L. 292, 19th Cong., 1st Sess., and the Lanham Act, P.L. 849, 76th Cong., as amended.
4. MCL 1948 ss. 125.271 and following, MSA ss. 5.2963 and following; s. 5.4091; *Wyoming Tp. v. Herweyer*, 1948, 321 M. 611, 33 N.W. 93; *Stevens v. Royal Oak Tp.*, 1955, 342 M. 105, 68 N.W. 2d 787.
5. *Op. Atty. Gen.* 1943-44, p. 734, no. 0-2206.
6. MCL 1948 s. 331.1, MSA s. 5.2456 (1).
7. MCL 1948 s. 331.3, MSA s. 5.2456 (3).
8. MCL 1948 s. 41.701, MSA s. 14.1181.
9. MCL 1948 s. 327.2, MSA s. 14.62.
10. *Op. Atty. Gen.* 1915, p. 569.
11. MCL 1948 s. 327.2, MSA s. 14.62.
12. *Op. Atty. Gen.* 1935-36, p. 6.
13. *Op. Atty. Gen.* 1928-30, p. 227.
14. MCL 1948 s. 327.2, MSA s. 14.62.

15. MCL 1948 s. 327.7, MSA s. 14.67.
16. MCL 1948 s. 338.392, MSA s. 14.712.
17. MCL 1948 s. 327.12, MSA s. 14.72.
18. MCL 1948 ss. 327.17-327.21, MSA ss. 14.77-14.81.
19. MCL 1948 s. 327.9, MSA s. 14.69.
20. MCL 1948 s. 327.10, MSA s. 14.70.
21. Op. Atty. Gen. 1952-54, p. 108, no. 1629.
22. MCL 1948 s. 327.46, MSA s. 14.107.
23. Kalamazoo Tp. v. Kalamazoo Garbage Co., 1924, 229 M. 263, 200 N.W. 953.
24. Op. Atty. Gen. 1917, p. 167.
25. Kalamazoo Tp. v. Kalamazoo Garbage Co., footnote 23.
26. Same as footnote 24.
27. Same as footnote 24.
28. Atty. Gen. ex rel. Bissel v. Burrell, 1875, 31 M. 25.
29. MCL 1948 s. 41.441, MSA s. 5.271.
30. MCL 1948 s. 41.444, MSA s. 5.274.
31. MCL 1948 s. 41.445, MSA s. 5.275.
32. MCL 1948 s. 41.445a, MSA s. 5.275 (1).
33. MCL 1948 s. 41.446, MSA s. 5.276.
34. MCL 1948 s. 41.442, MSA s. 5.272.
35. MCL 1948 ss. 41.421, 41.423, 41.424, MSA ss. 5.2441, 5.2443, 5.2444.
36. MCL 1948 s. 41.422, MSA s. 5.2442.
37. MCL 1948 s. 41.461, MSA s. 5.2446.
38. MCL 1948 s. 123.51, MSA s. 5.2421.
39. Royston v. City of Charlotte, 1936, 278 M. 255, 270 N.W. 288.
40. MCL 1948 s. 123.53, MSA s. 5.2423.
41. MCL 1948 s. 123.54, MSA s. 5.2424.
42. MCL 1948 ss. 123.41-123.43, 123.45, 123.46, MSA ss. 5.2381-5.2383, 5.2385, 5.2386.
43. Op. Atty. Gen., 1947-48, p. 162, no. 21.
44. MCL 1948 s. 41.481, MSA s. 5.2391.
45. MCL 1948 ss. 320.201-320.210, MSA ss. 13.281-13.290.
46. MCL 1948 ss. 35.861-35.864, MSA ss. 4.1371-4.1374.
47. MCL 1948 s. 128.61, MSA s. 5.3121.
48. Same as 47.
49. Pub. Acts 204, 1957.
50. MCL 1948 s. 128.62, MSA s. 5.3122.
51. MCL 1948 s. 128.151-128.164, MSA ss. 8.141-8.154.
52. MCL 1948 s. 327.301, MSA s. 14.201.
53. MCL 1948 s. 128.1, MSA s. 5.3165.
54. MCL 1948 ss. 128.71-128.74, MSA ss. 5.3131-5.3134; and see Mich. Const. Art VIII.
55. Op. Atty. Gen. 1917, p. 67.
56. Rowley v. Laingsburg Cemetery Assn., 1921, 215 M. 673, 184 N.W. 480; Op. Atty. Gen. 1921-22, p. 380.
57. MCL 1948 s. 327.6, MSA s. 14.66.
58. MCL 1948 ss. 128.31-128.36, MSA ss. 5.3071-5.3076.
59. MCL 1948 ss. 327.27-327.28, MSA ss. 14.87-14.88.
60. MCL 1948 ss. 327.29-327.34, MSA ss. 14.89-14.94.
61. Op. Atty. Gen. 1943-44, p. 442, no. 0-829.
62. Op. Atty. Gen. 1917, p. 318.
63. MCL 1948 s. 287.18, MSA s. 12.388.
64. Op. Atty. Gen. 1916, p. 442.
65. MCL 1948 ss. 286.121-286.123, MSA ss. 12.291-12.293, and see MCL 1948 s. 41.701, MSA s. 14.1181.

CHAPTER 8

Public Safety, Police and Fire

Police Protection — General

The township board may adopt ordinances regulating fire, police protection, traffic and parking, sidewalk maintenance and repair, and provide penalties for their violation.¹ It may establish a police or fire administrative board, and may pay the costs of police service from the general or contingent fund, or may set up a special assessment district. It may establish a police department with full power to enforce township ordinances, or it may by resolution appropriate funds and call upon the county sheriff to provide special police protection. The sheriff must provide protection up to the limit of the appropriations made, and has the power to appoint special township deputies responsible to him.²

Powers of Township Police Officers

The township board may provide as well for traffic officers for the township, paying them from the general fund.³ Two or more township boards may join together at a joint meeting to appoint such officer, after a separate majority vote by each board approving the appointment. At the same joint meeting, the boards should decide how to apportion his compensation among the cooperating townships.⁴ A traffic officer may act as peace officer only in the enforcement of traffic laws, and when arresting in non-traffic situations, has only the power of private persons. Similarly, a police officer employed only under the general statutes pertaining to township police can act only to enforce township ordinances. These officers are not peace officers and therefore have no power to enforce state and federal laws beyond the powers of arrest accorded to an ordinary citizen.⁵ However, they may become peace officers by special legislation or by being appointed sheriff's deputies, and in some townships this has occurred. Peace officers may arrest a person upon "reasonable suspicion," but this does not apply to citizens generally. Township police officers, who are not also peace officers, may be liable in a court suit if they arrest a person who is subsequently found not guilty.

Township Officers Under Duty to Inform

Every township officer, the board member included, has a duty to inform the supervisor immediately if he knows or has reason to know that any penalty or forfeiture has been incurred within the township.⁶ In such

a situation, the township supervisor must bring the matter before a justice of the peace or notify the county prosecutor, following the statutory procedures prescribed.⁷

Suits Against Policemen

If a police officer is sued for wrongful acts, omissions, or negligence done in the course of his duties as an officer, the township may indemnify him for any judgments levied against him, except in the case of willful misconduct. Similarly the township may furnish the officer with legal counsel or may appeal on his behalf, though the township may not join him as a party to the suit.⁸ Civil defense workers are not accorded such benefits.

Extent of Ordinance-Making Power; Jurisdiction

Ordinances passed by the township board may apply to all portions of the township, including specific platted lands within the township, whether or not such areas and streets are devoted to private use. In the case of platted lands, township boards may accept contributions from representatives of platted lands benefited, to defray administrative and enforcement costs.⁹

Townships can only pass ordinances when they are empowered to act by statute. Thus it has been held that they cannot enact an ordinance prohibiting discharge of firearms and other weapons within a specified platted area within a township.¹⁰ Similarly it has been held that they cannot prohibit hunting in unincorporated parts of the township since that is a state power, not delegated to townships.¹¹ Townships cannot pass "ice box" ordinances designed to protect children from becoming locked in abandoned refrigerators because it has been held such ordinances relate to the safety rather than the health of townspeople.¹² But the township board may adopt ordinances to license and regulate the use of bicycles.¹³ The township meeting can make orders and by-laws determining the time and manner in which animals shall be restrained when at large on the highways, and other ordinances necessary for the "peace. . . and good order" of the township.¹⁴

Special Provisions for Upper Peninsula Townships

Township boards in the upper peninsula have special licensing and regulating powers relating to pawnbrokers, peddlers, and vendors. They cannot attempt to regulate agricultural machinery or agricultural produce, or the sale of meat or fish under this statute.¹⁵ An ordinance passed under this act by Mackinac Island township requiring that waitresses and other summer workers be registered, licensed and fingerprinted was ruled unconstitutional by the Attorney General in a 1956 opinion. The empowering statute had been repealed by a statute in 1897,¹⁶ but this repealing statute was held unconstitutional leaving the original act in force.¹⁷ The legislature then passed an amended act which would have extended similar pow-

ers to all township boards in the state,¹⁸ but this new act was then held unconstitutional.¹⁹ So at present only upper peninsula township boards may have these special powers.

Penalties for Violation of Ordinance

In providing penalties for violation of ordinances, the township board may provide for not more than a \$100 fine, and/or not over ninety days in jail.²⁰ The township constable is to serve warrants, notices, and process lawfully directed to him by the township board.²¹

Regulation of Navigational Facilities

Townships may also adopt regulations and ordinances to govern the use of waterways and other navigational facilities under its control, either within or outside its borders. They may employ harbor police, guards, or a harbor master with police powers, and may set penalties for violations. Townships may enact rules for public safety in harbor facilities or surrounding area. By ordinance or resolution, the township board may set up a harbor board. It may join with one or more political subdivisions, or with state agencies, to operate and govern harbor facilities, or may contract as necessary.²² But townships have only limited control over actual traffic on the lakes themselves. It has been held that, though a township may adopt rules for harbor facilities owned by the township, it has no authority to regulate motorboat traffic on the lake itself.²³ If the county owns a public dock, the township board may act as governing body for that dock.²⁴

Regulation of Poolrooms, Dance-Halls, Bowling Alleys, Soft-Drink Emporiums

Along with their other police and regulatory powers, townships have the power to regulate poolrooms, dance-halls, bowling alleys and soft-drink emporiums. No such facility can be operated without a license from the township board. These licenses must be renewed annually. The township board must revoke a license where the license holder permits gambling or the sale and use of intoxicating liquors, allows persons under alcoholic influence to remain on the premises, or persons of low repute to frequent the establishment, or permits the place to become reputed in the vicinity as immoral or a menace to the community.²⁵ Billiard parlors and poolrooms may be allowed by the township board to remain open until midnight, but unless special permission is granted, they must close on Sundays and on weekdays at 10:00 p.m.²⁶

Contracts to Supply Services Beyond Township Borders

Townships can contract with any persons, firms, corporations, or any unit of federal or state government, or any municipal corporation beyond its borders to furnish to property owners any lawful service which it can

furnish within its own limits. The money paid for such service must be adequate, however.²⁷ Such services include both police and fire protection.

Cooperation with Other Local Units to Supply and Receive Services

Similarly the township may join with any other township, city, charter township, city village, school metropolitan district, city district, public authority, or drainage district. Either by contract or otherwise these units may arrange for ownership, operation, or performance, either jointly or by any one unit on behalf of all, of any property, facility, or service which each would have the permission to own, operate, or perform separately.²⁸ Reciprocal fire aid by which one township agrees to aid another township in time of fire emergency, in return for a promise that the other township reciprocate, is authorized.²⁹

Fire-fighting and Prevention; Financing Fire-fighting Service

In the fire protection and fighting area, the powers of township boards are broad and defined in many statutes. The board has general power to purchase fire equipment and facilities,³⁰ and to adopt ordinances regulating fire.³¹ The board may enact ordinances and resolutions for fire prevention,³² and it may direct and establish regulations for fire department personnel, equipment, and operations.³³ It may set up a fire administrative board.³⁴

Township boards can meet in joint sessions with other township boards to take care of fire matters if they so desire.³⁵ The board may appropriate money by resolution from either the general or contingent fund, not over ten mills per year of assessed valuation of the township, to purchase fire equipment and stations. In so acting, the board can act either alone or join with any other board. In running the fire department for the year or contracting for fire protection, the township board may spend up to two and a half mills. In so doing, it can act either alone or with other townships.

Fire costs can either be paid for by levying a special assessment or by issuing bonds in anticipation of collection of special assessments. If a special assessment is to be levied, the board may submit the question to a referendum. If 10 percent of the landowners petition, the board must submit the question of the special assessment to a referendum at either a general or special election.³⁶ A township board either alone or with other boards, can establish a special assessment district to finance fire protection. The board must set up the district in detail, and make the proposed plan public at least five days before the public hearing. The hearing must be held on at least one day, between 7:00 and 9:00 p.m., to hear objections to the assessment estimates and to the creation of the district.³⁷

The township board, after approval by the electors, may pledge the township credit for the payment of special assessment bonds. If the special assessment fund is insufficient to pay these bonds, the township board may advance the amount necessary to pay them. This money should be repaid as special assessment funds are collected, or by reassessment of the deficit against the special assessment district if necessary.³⁸ Once a special assessment district has been created, the township board or boards acting jointly, may appropriate money annually thereafter. The amount may not be more than two mills of the assessed valuation of the area protected.³⁹ In contracting for fire equipment, township boards must look to the empowering statutes carefully. One decision of the attorney general held that a board may not enter into a contract providing for payments for fire equipment on the "installment plan" for a period of time longer than three years.⁴⁰

Footnotes

1. MCL 1948 s. 41.181 - 41.183, 41.411 and following; MSA ss. 5.45, 5.2411 and following; and see especially MCL 1948 ss. 41.751 - 41.753, MSA ss. 5.2640 (21) - 5.2640 (23); MCL 1948 ss. 41.851 - 41.856, MSA ss. 5.2640 (31) - 5.2640 (36); and Op. Atty. Gen. 1955, no. 1891.
2. MCL 1948 s. 41.181 - 41.183, MSA s. 5.45.
3. Op. Atty. Gen., 1928-1930, p. 103.
4. MCL 1948 s. 41.201, MSA s. 5.191.
5. Op. Atty. Gen., 1947-48, p. 317, No. 375.
6. MCL 1948 s. 635.13, MSA s. 27.2197.
7. MCL 1948 ss. 635.12, 635.14, MSA ss. 27.2196, 27.2198.
8. MCL 1948 ss. 124.101 - 124.103, MSA ss. 5.3576 (1) to (3).
9. MCL 1948 s. 41.181, MSA s. 5.45 (1).
10. Op. Atty. Gen., 1952-54, p. 247, no. 1716.
11. Op. Atty. Gen., 1947-48, p. 72, no. 0-5087.
12. Op. Atty. Gen. 1952-54, p. 265, no. 1722.
13. MCL 1948 s. 41.181, MSA s. 5.45 (1).
14. MCL 1948 s. 41.4, MSA s. 5.4.
15. MCL 1948 ss. 446.101 - 446.105, MSA ss. 19.571 - 19.575.
16. M. Pub. Acts 1897, no. 248.
17. *Rodgers v. Kent Circuit Judge*, 1897, 115 M. 441, 73 N.W. 381.
18. *Amendatory Act 137*, 1895.
19. *People v. DeBlaay*, 1904, 137 M. 402, 100 N.W. 598.
20. MCL 1948 s. 41.183, MSA s. 5.45 (3).
21. MCL 1948 s. 41.82, MSA s. 5.74.
22. MCL 1948 ss. 281.541, 281.543, MSA ss. 5.2768 (11), 5.2768 (13), and 5.2768 (21).
23. Op. Atty. Gen., 1952-54, p. 426, no. 1817.
24. MCL 1948 s. 41.482, MSA s. 5.2392.
25. MCL 1948 ss. 41.501 - 41.507, MSA ss. 18.491 - 18.498 describe the procedure in detail.
26. MCL 1948 s. 41.551, MSA s. 18.531.
27. MCL 1948 s. 124.3, MSA s. 5.4083.
28. MCL 1948 ss. 124.1 - 124.2, MSA ss. 5.4081 - 5.4082.
29. Op. Atty. Gen., 1955, p. 191, no 2032.
30. MCL 1948 s. 41.411 and following, MSA s. 5.2411 and following.

31. MCL 1948 ss. 41.181, 41.411 and following, MSA ss. 5.45, 5.2411 and following.
32. MCL 1948 ss. 41.805, MSA s. 5.2640(5).
33. MCL 1948 ss. 41.806, MSA s. 5.2640(6).
34. Same as footnote 33.
35. MCL 1948 s. 41.809, MSA s. 5.2640(9).
36. MCL 1948 s. 41.801, MSA s. 5.2640(1).
37. Same as footnote 36.
38. MCL 1948 s. 41.803, MSA s. 5.2640(3), but see *City of Berkley v. Royal Oak Tp.* 1948. 320 M. 597, 31 N.W. 2d 825, for possibility of reassessment for funds uncollected on original assessment.
39. MCL 1948 s. 41.802, MSA s. 5.2640(2).
40. Op. Atty. Gen., 1952-54, p. 460, no. 1865.

CHAPTER 9

Planning, Zoning, Building Regulations, Platting, Public Utilities Regulation, Parking Lots, Junk Yards

Zoning — General

Townships have powers of planning and zoning, with the main test of the legality of ordinances being whether they are reasonable under the circumstances and designed to promote the public health, safety, morals and general welfare.¹ Zoning ordinances should be drawn with extreme care by a skilled person, since the slightest error brings troublesome litigation. Zoning ordinances designed merely to protect and maintain property values are held void.²

Zoning — Procedure

The township board is the enacting body. It must first adopt a resolution declaring its intent to proceed under the terms of the enabling act, and then, within ten days, publish the resolution in a newspaper of general circulation. An alternate procedure to initiate zoning is by petition signed by 8 percent of the registered voters living in the unincorporated area of the township followed by action of the township board.³

Zoning — Board of

The ordinance is prepared by a zoning board of from four to seven members appointed by the township board for staggered terms.⁴ This board must hold a duly advertised public hearing on the zoning proposals and submit the proposals to a county agency for approval before submitting them to the township board.⁵

Zoning — Adoption of and Referendum on Ordinance

Following adoption by the township board, the ordinance must be published in full within ten days in a newspaper circulating in the township.⁶ Within thirty days after passage, the electors may file a petition, signed by 8 percent of the total number of votes cast in the township for governor at the last election, for a referendum on the ordinance.⁷ Approval is by majority of those voting. A referendum on a zoning ordinance is mandatory only on petition.

Zoning — Provisions

In zoning, the unincorporated area may be divided into any number, type and shape of districts deemed best suited to conditions. Provisions may also be adopted limiting location, height, stories, size and use of future buildings and structures, including tents and trailer coaches; the area of yards, courts, open spaces, and the sanitary, safety, and protective measures required; and the maximum number of families that may be housed in such buildings and structures.⁸ The township board must designate the proper official to enforce the ordinance and provide penalties for violations.⁹

Zoning — Specific Limitations

In zoning, a township may exclude advertising signs from some districts, depending upon the character of the district, but may not entirely exclude such signs from the township.¹⁰ There are similar limitations regarding trailer courts.¹¹ Under the guise of zoning, townships cannot regulate hunting or other things over which they have no specific legislative power.¹²

Zoning — Amendments and Repeal

Amendments may be made by the procedure set out for the enactment of the original zoning ordinance.¹³ The township board may repeal a zoning ordinance,¹⁴ but the electors may not if the ordinance was properly enacted.¹⁵

Township Planning Commissions

A township may plan for the future and need not restrict itself to present necessities.¹⁶ Under an amendment of the municipal planning commission act in 1952, townships may create planning commissions with the same powers as city commissions.¹⁷ Such commissions have broad powers by statute, but may be overruled in certain cases by a two-thirds vote of the township board.¹⁸ Their primary purpose is to formulate a "master plan" to guide future developments. They may also formulate and adopt regulations governing the subdivision of land within their jurisdiction.¹⁹ Ideally, planning should precede the adoption of a zoning ordinance and other ordinances to which plans are basic. Upon the creation of a planning commission, the powers and records of any existing zoning board are transferred to it.

Regional Planning Commissions

Two or more townships or other local government units, including municipalities, may join together by resolution of the participating bodies to form regional planning commissions.²⁰ The boundaries need not be coincidental with those of any governmental unit, but must be established by resolution of the participants. Township boards may allocate funds for the

use of the commission. Such commissions may conduct all types of necessary research, make plans for the development of the region, and perform advisory services. Local governmental subdivisions, whether active participants or not, may adopt any or all portions of the plans in line with their individual powers to adopt master plans.²¹

Building Codes

Townships may by ordinance set the minimum construction requirements in their unincorporated area. These may specify the manner in which buildings and other structures shall thereafter be erected or altered and the type of materials to be used.²² The township may be divided into construction districts similar to but not necessarily coincidental with zoning districts. No special board or agency is required to draft the code, nor is a public hearing required. Under a 1951 amendment to the act, a township may adopt "by reference" any standard building, plumbing or electrical code promulgated by any agency of Michigan government, or national organization organized to develop such codes. It is not necessary to publish such a code in full, provided copies are available for inspection by and distribution to the public.

Building Codes vs. Zoning Ordinances

The differences between building codes and zoning ordinances should be observed, and provisions of one should not be included in the ordinance of the other to avoid possible conflicts with Section 21 of Michigan's constitution which provides that no law shall embrace more than one object.

The Zoning Power, The Planning Commission, and the Master Plan — Considerations and Problems

Planning and zoning powers are generally used to make the township safer, more pleasant and healthful, and more conducive to orderly development. Provision should be made for all types of land uses which the population, resources and location of the township warrant, but provisions need not be made for every land use. If a township possesses assets suitable for industry, areas best suited to such land use may be zoned in the same manner as areas best suited to residential, commercial and other developments.

The "master plan" is generally designed in the interest of the future development of the township, and the township should always attempt to operate according to this plan. To keep the township in line with changing conditions, the plan may be frequently reviewed and adjusted to the new circumstances. Only by following such a plan can the best potentialities of the township be realized.

"Spot zoning" has been frowned upon by the courts. If the master plan is sound, permitting the use of an individual lot or area of land for purposes other than those permitted in the zoning district as a whole is almost always unfair to surrounding property owners. It extends a special privilege to the applicant in which others may not share. The presumption should always be in favor of the existing zoning plan, even though pressure from special interest groups may be strong. Surrounding property owners may "approve" the nonconforming use, but in the long run they and the township might be hurt by the exception.

The greatest returns from planning and zoning are realized when townships cooperate in setting up their plans and ordinances. Planning, as explained above, can be done on a regional basis. While each township must enact and administer its own zoning and building code ordinances, they all can be coordinated.

Townships that are thinly populated or remote from towns and cities may regard planning and zoning as unnecessary. Changes, however, often come overnight, and it is easier and simpler to plan and act in advance, rather than after the problems have arisen, because zoning cannot be retroactive.

Township Boundaries and Internal Divisions

Under Thomas Jefferson's Northwest Ordinance of 1787 the United States undertook to divide into townships the entire area lying between the Mississippi and the Ohio rivers. Later this same system was employed for the Western territory as it was brought into the Union. Under this system a series of twenty-four arbitrary meridian lines are constructed running north and south, the first of these lines being the Ohio-Indiana border, and the last being a little west of Portland, Oregon. In addition, lines corresponding to major degrees of latitude were established. At least one intersection of these lines occurs in every state, and it is from these lines that townships are located, as they would be by grids on a map. In Michigan the prime meridian runs through the center of Ingham County and the base line passes between Jackson and Lansing, falling along the northern line of the second tier of counties from the southern border of Michigan. Townships are numbered according to their location north or south from the base lines and east and west from the prime meridian.

Each "standard" township is six miles square, and is surveyed into thirty-six square miles. There are many irregular townships, larger or smaller than the standard. Internal divisions of these correspond as far as practicable to the standard pattern. Each square mile is called a section. Each section is subdivided into rectangular tracts known as halves, quarters, and quarter quarters, but local usage sometimes varies. It is this subdivision of the sections of land within the township with which we are here

interested. It is the responsibility of the board to see that real estate developments and land promotions are carefully planned, that they provide proper areas for streets, governmental functions, recreational and educational activities, and other necessary uses. To secure to the town sufficient authority to see that land is properly used and that building lots are of proper size and shape, the legislature has provided that the towns shall have authority to approve plats of land as set out by private builders, to see that they conform to the proper standards. The platting acts are extensive and detailed,²³ but some basic ideas as to the plan should be kept in mind.

Procedure Under the Platting Acts

A plat proprietor must file his plan with the township board, and the township board has thirty days to make such written recommendations as it thinks wise. The proprietor must have a survey made, and five plats laid out by a professional engineer or land surveyor.²⁴ The township board may require a fee of not more than \$60.00 to cover cost of inspecting the platted land.²⁵ Within thirty days after the plat is filed with the township board, the board may approve or reject the plat. The board may reject only for nonconformance to the platting act, and must give notice of its rejection and the reasons for such action within the thirty-day period.²⁶ The statutes provide for minimum allowable sizes for plat lots in detail, but the township board may set rules as to width and depth of lots within this limitation and may reject those lots not conforming.²⁷ Those plats designated as public land pass to the township in trust for the specified public purposes.²⁸

Board Must Require Security from Plat Proprietor

To hold the plat proprietor to performance as agreed as far as streets, public places, sewers and water improvements are concerned, the township board must require security from the proprietor. The board must rebate portions of this money to the proprietor as the work progresses.²⁹ The board may require bond to assure completion of other planned improvements as well.³⁰ The board may thus provide for proper drainage by road ditches, proper housing set-backs, water, gas and other lines, sewers, proper grading and graveling of roads, provision of sidewalks if necessary, and other necessary or desirable improvements. The act should be looked to carefully, since it describes the powers and procedures of the board in platting in extensive detail. If the character of platted land changes, the township board may cause a new survey to be made.³¹ This assessor's plat, when used for conveyances and other legal and governmental purposes, has caused difficulties and litigation. It seems to be going out of use gradually.

Public Parking Facilities

Any township may acquire and operate public parking facilities, issuing revenue bonds to finance them where necessary. The township board may submit the question of parking facilities at any general or special election. It may purchase, construct, or condemn property in connection with the provision of such facilities. Where a fee is charged for the use of such facilities, the property is not exempt from taxation. Townships may run parking facilities independently or jointly.³² In running such facilities, the township board may lease space to anyone, not exceeding 25 percent of the floor area of the structure. The income from the lease is to be treated as part of the income from the facility. No business involving automobile servicing or repairing, or the furnishing of gasoline or auto supplies can be carried on at or in connection with township parking facilities.³³

Used Car Lot Regulation

Township boards may also regulate used car lots by passing a resolution calling for licensing. They may set license fees, not to exceed \$100 per year. The board may also set conditions for operating used car lots, and may refuse to grant a license for failure to comply with such conditions or for other just cause.³⁴ Such conditions often include provision for erection of a rail or wall to prevent cars from rolling or otherwise going from the car lot to the street or sidewalk, with consequent danger of injury to pedestrians or passing motorists.

Junk Yard Regulation; Peddlers

Similarly, at a regular meeting the township board may adopt a resolution to license and regulate junk yards and places for dismantling automobiles, and may require a fee not exceeding \$25.00 per year.³⁵ It has been held that peddlers may also come under township board regulation. But the township board must exercise its authority to license and regulate reasonably and not arbitrarily.³⁶

Power of Townships to Acquire, Build, and Operate Public Utilities

Townships may acquire a public utility to supply light, heat and/or power only upon a vote of three-fifths of the township electors at a regular or special election.³⁷ In townships of less than 160,000, the township may construct, extend, and repair existing utility systems.³⁸ Some of these provisions regarding township operation of public utilities were added to the Revenue Bond Act in 1954, and overturn a long line of opinions of the state attorney general denying townships such power.³⁹ But in those public utilities areas not specifically mentioned in the empowering statutes, townships are still forbidden to act. As mentioned above, in Chapter 5 under

space for alcoholic beverages.⁴³ As mentioned in Chapter 5, under "Revenue Bond Act" of 1933, and in the preceding paragraph, there is considerable doubt that the powers apparently given may be used by the township on its own initiative.

Bus, Streetcar, and Public Utility Franchises

The township board may grant a franchise for use of the streets or any other public places of the township for poles, wires, pipes, conduits, or tracks, and may provide privileges for their further operation and maintenance. Township boards can also grant public utility franchises, subject to the approval of the voters at the next regular election. The persons or company receiving the franchise may require that a special election be called by the township board. If the voters affirm the franchise, it is confirmed and irrevocable, but if the voters reject it, the franchise is void.⁴⁴ Boards cannot insert provisions relating to rates and services in franchises they grant to common carriers like bus companies.⁴⁵ Under the heading "Revenue Bond Act of 1933," it is still not clear whether townships may exercise these powers without further action by the legislature.

Power to Build Public Works

Similarly the township can construct, extend, repair and provide for housing facilities, garbage and rubbish disposal plants, incinerators, transportation systems, sewage disposal systems, water supply systems, automobile parking facilities, yacht basins, harbors, docks, wharves, terminal facilities, elevated highways, bridges, tunnels, ferries, community buildings, stadiums, convention halls, auditoriums, dormitories, hospitals and other public buildings, parks and recreation facilities, reforestation projects, aeronautical facilities, and marine railways.⁴⁰ The township can borrow money and issue bonds to pay for any of these projects,⁴¹ and no referendum is necessary.⁴² But the township board is forbidden to provide storage

Contracts for Extension of Village or City Streetcar Line

Township boards may also make agreements with a street railway line serving a city so that the line may be extended into the township. County commissioners may give consent by majority vote for extension of street railways along county roads.⁴⁶ Since no public utility may use any highway, street, or alley without consent of the township officers involved,⁴⁷ a street railway laid in a township without its permission is a nuisance⁴⁸ and the township may compel removal of the tracks by a bill in equity.⁴⁹ This is true even though township officers failed to take steps to stop construction, or even acquiesced.⁵⁰ All township board agreements with street railways must appear in the township records.⁵¹

Footnotes

1. *Faucher v. Grosse Ile Tp. Bldg. Inspector*, 1948, 321 M. 193, 32 N.W. 3d 440; *Morris G. Lamamie & Son, Inc., v. Gidley, Southfield Tp. Bldg. Inspector*, 1949, 326 M. 410, 40 N.W. 2d 205.
2. *Frischkorn Const. Co. v. Lambert, Redford Tp. Bldg. Inspector*, 1946, 315 M. 556, 24 N.W. 2d 209; *Elizabeth Lakes Estates v. Waterford Tp.*, 1947, 317 M. 359, 26 N.W. 2d 788; *Faucher v. Sherwood, Grosse Ile Tp. Bldg. Inspector*, 1948, 321 M. 193, 32 N.W. 2d 440; *Ritenour v. Dearborn Tp.*, 1949, 326 M. 242, 40 N.W. 2d 137.
3. MCL 1948 s. 125.272, MSA s. 5.2963 (2).
4. MCL 1948 s. 125.274, MSA s. 5.2963 (4).
5. MCL 1948 s. 125.279, MSA s. 5.2963 (9).
6. MCL 1948 s. 41.191, MSA s. 5.6 (1).
7. MCL 1948 s. 125.282, MSA s. 5.2963 (12).
8. MCL 1948 s. 125.271, MSA s. 5.2963 (1).
9. MCL 1948 s. 125.294, MSA s. 5.2963 (24).
10. Op. Atty. Gen. 1951-52, p. 103, no. 1232.
11. *Smith v. Plymouth Tp. Bldg. Insp.*, 1956, 346 M. 57, 77 N.W. 2d 332.
12. Op. Atty. Gen. 1947-48, p. 72, no. 0-5087.
13. MCL 1948 s. 125.284, MSA s. 5.2963 (14).
14. Op. Atty. Gen. 1943-44, p. 44, no. 24276.
15. Op. Atty. Gen. 1955, p. 320, no. 2094.
16. *Austin v. Older*, 1938, 283 M. 667, 278 N.W. 727, and see MSA ss. 5.2991-5.3006.
17. MCL 1948 s. 125.31, MSA ss. 5.2991 (1) and M. Pub. Acts 1952, no. 25.
18. MCL 1948 s. 125.39, MSA s. 5.2999.
19. MCL 1948 s. 125.44, MSA s. 5.3004.
20. MCL 1948 s. 125.13, MSA s. 5.3008 (3).
21. MCL 1948 s. 125.21, MSA s. 5.3008 (11).
22. MCL 1948 s. 125.351, MSA s. 5.2973 (1).
23. MCL 1948 ss. 560.2-560.80, MSA ss. 26.432-26.511, known as the "Plat Acts."
24. MCL 1948 s. 560.4, MSA s. 26.434, further details in MCL 1948 ss. 560.5-560.15, MSA ss. 26.435-26.445.
25. MCL 1948 s. 560.16, MSA s. 26.446.
26. MCL 1948 s. 560.17, MSA s. 26.447.
27. MCL 1948 s. 560.30, MSA s. 26.460.
28. MCL 1948 s. 560.50, MSA s. 26.480.
29. MCL 1948 s. 560.23, MSA s. 26.453.
30. MCL 1948 s. 560.24, MSA s. 26.454.
31. MCL 1948 ss. 560.51, 560.56, MSA ss. 26.481, 26.486. For miscellaneous provisions, including Auditor General's approval of plots, see MCL 1948 ss. 560.31-560.49, MSA ss. 26.461-26.479.
32. MCL 1948 s. 141.171, MSA s. 5.280 (1).
33. MCL 1948 s. 141.172, MSA s. 5.280 (2).
34. MCL 1948 s. 445.459, MSA s. 19.737, held constitutional in *People v. Gottlieb*, 1953, 337 M. 276, 59 N.W. 2d 289.
35. MCL 1948 s. 445.451, MSA s. 19.731.
36. *Blumlo v. Hampton Tp. Bd.*, 1944, 309 M. 452, 15 N.W. 2d 705. But see *Garfield Tp. v. Young*, 1954, 340 M. 616, 66 N.W. 2d 85, where a highly irregular ordinance was held constitutional and valid.
37. MCL 1948 ss. 141.101-141.138, MSA ss. 5.2731-5.2766 (2) Revenue Bond Act of 1933, as amended by Pub. Acts 1954, no. 136, but see MCL 1948 s. 124.4, MSA s. 5.4084.
38. Same as footnote 37.

39. Op. Atty. Gen. 1945-46, p. 176, no. 0-2899 (cannot spend to acquire airport) ; Op. Atty. Gen. 1935-36, p. 180 (cannot supply power and light or engage in utility business) ; Op. Atty. Gen., 1935-36, p. 375 (cannot engage in water-works) ; Op. Atty. Gen., 1939-40, p. 489 (cannot build, maintain or operate telephone service).
40. MCL 1948 ss. 141.101-141.139, MSA ss. 5.2731-5.2766, as amended by M. Pub. Acts 1954, no. 136.
41. MCL 1948 s. 141.107, MSA s. 5.2737.
42. MCL 1948 s. 141.106, MSA s. 5.2736.
43. Revenue Bond Act of 1933, footnote 37.
44. MCL 1948 ss. 460.601-460.605, MSA ss. 22.171-22.175, and note to MSA s. 5.1744.
45. Op. Atty. Gen., 1914, p. 239.
46. MCL 1948 s. 472.13, MSA s. 22.433.
47. Mich. Const. 1908, Art. VIII, s. 28.
48. Bangor Tp. v. Bay City Traction and Elec. Co., 1907, 147 M. 165, 110 N.W. 490, 118 A.S. 546, 7 L.R.A.n.s. 1187.
49. City of Detroit v. Detroit United Ry., 1912, 172 M. 136, 137 N.W. 645, affd. 229 US 39, 57 L.Ed. 1056.
50. Bangor Tp. v. Bay City Traction Co., footnote 48.
51. MCL 1948 s. 472.13, MSA s. 22.433.

CHAPTER 10

Public Works

Public Works — General

The Revenue Bond Act of 1933 appears to authorize township boards in general terms to purchase, construct, and extend public improvements, although as discussed in Chapter 5 there is informed opinion to the effect that townships must secure special permission from the legislature before undertaking any of the projects mentioned in the act.

Another portion of the Michigan statutes authorizes township boards to contract for public transportation facilities, establish and maintain garbage systems and disposal facilities or contract for such, construct or acquire sanitary sewers and disposal plants, construct water filtration plants, purchase or construct waterworks, provide for soil and beach erosion control, including seawalls, breakwaters and other necessary construction to effect this purpose, and provide police and fire protection or contract for such.¹

Roads, Bridges, Lighting and Street Markings

This same statute also contains provisions some of which are apparently made obsolete by the statutory provisions transferring power over all roads to the counties. These powers include construction of bridges, paving and grading streets, treating streets for dust, and laying storm sewers to carry off surface water on the streets. Recent legislation has made more clear the powers of townships in relation to roads. Acting with approval of the County Road Commission, townships may use township money to widen trunk lines within the township,² may build sidewalks,³ may own and operate street cleaning and snow removal equipment,⁴ may set up special assessment districts if the owners of 65 percent of the frontage of the road in question so petition,⁵ may pave or place curbs and gutters,⁶ and must provide street markers if they seek to regulate traffic through traffic ordinance. Primary power over road improvements belongs to the county.⁷ Recent legislation authorizes use of contingent money, special assessment, sales taxes, anticipation notes or bonds, and general obligation bonds, if approved by the voters, to finance public improvements, including roads.⁸ Thus earlier rulings like the one prohibiting townships from using state sales tax money to construct sidewalks,⁹ are no longer applicable.

Financing the Project — Problems and Considerations

In considering the financing of a public works project, board members will often find that they have a choice as to whether to issue bonds, set up a special assessment district, join with other townships to set up a public authority, or associate the township with an existing authority. The terms of the statute must always govern, of course, and this paragraph will apply only where the board has a choice of methods of finance. Not only may one particular method of financing the project be more acceptable to the people of the community, or be more easily assessed and collected, but notions of equity and fairness must be given consideration.

Courts in modern times have extended the notion of due process of law to include such notions of equity and fairness, and it is essential that such matters be given attention. For instance, in many states, sidewalks, street lights and similar improvements are financed by special assessments based upon the "front footage" of property facing upon the improvement. Such improvements benefit others as much as they do the landowner. When one considers not only the portion of the public benefited and the land benefited but also how long the improvement will last, he can see the complexities of the problem. Cast iron or concrete water mains laid along a township street today will almost certainly be in use a century from now and probably two centuries from now. Since all subsequent owners of land benefited in any way by the improvement paid for by special assessment will profit from the use of the improvement, it is somewhat inequitable to impose the full cost of the improvement upon the current landowner over a short period of years.

Some local government units have provided that part of the cost shall be borne by front footage special assessment, and part by general tax revenues. Others have provided for front footage special assessment and long-term bonds to stretch the cost into the future so that persons benefiting in the future may bear part of the cost. Others have attempted to meet the problem by providing for special assessment districts by means of which those who benefit by a public improvement, but who yet have no property facing on the improvement, nevertheless bear a part of the cost of it. The statutes must always be consulted before any such plan is formulated, to be sure that the board has power to act.

Summary and Comment

The use of long-term bonds seems more equitable in terms of "duration benefits" so that those who benefit in the future bear something of the cost of the improvements. The special assessment district, on the other hand, seems more equitable in terms of geographical apportionment of the

cost in relation to actual benefit. The front footage assessment basis operates most fairly where almost all property stretches along the road and consists of individual plots of relatively the same size and value. It would seem that a combination of payment from general funds, payment by long-term bonds, and payment by special assessment district would be the most equitable method of financing the public improvement, if somehow the correct ratios could be worked out for each case, and if the statutes permitted such a plan.

Practical Application

When considering special "front-footage" assessments, the township board must be careful to see that the public improvement is such that it materially benefits largely the property owners whose front-line footage is being levied against by special assessment. It has been held that the township cannot force a property owner to finance the cost of sewer mains and water mains running along his street, but that a special assessment district must be set up.¹⁰ The township has no power to take over private sewer and water mains without the consent of their owners, and the township may not charge the cost of sewer and water main maintenance to property owners in the form of special assessments. By the nature of such mains they benefit not only those fronting on the street, but also others who might draw water from the main, or who might have waste or surface water carried off their land directly or indirectly by such mains.

Special Public Works Provision

Townships with an assessed valuation of over \$7,500,000 may take action under a special statute.¹¹ After a petition signed by at least 65 percent of the record owners of the frontage involved, the township board may make improvement of roads by grading, graveling, paving, curbing and draining, if the county road commissioners approve, and may provide that their cost be borne by special assessment districts. Similarly, water and sewage improvements may be made, if a petition is signed by at least 51 percent of the owners of the area involved. The road bonds are limited to ten years, others, such as water and sewage, to thirty years.

Elaborate publication and procedural provisions make it necessary that any township board planning to act under the provisions of this statute study it carefully. When acting under this particular statute, the township has the power to issue bonds in anticipation of the collection of special assessments.

Township May Undertake Public Works Alone or in Concert

Various of the statutes discussed above give townships power to construct, repair, extend, and so on, sewage disposal systems and water sup-

ply systems. If it prefers, the township board can act in concert with other local governmental units in supplying water and sewage systems.

Township May Contract for Services; Financing Alternatives

The township board has the power to contract for water service with an adjoining city or other local governmental unit. It may issue bonds and make special assessments as necessary. But before the township board may set up a special assessment district for such purpose the owners of the majority of the area of the property affected must petition for the special assessment district.¹² Additional financing alternatives for such projects are provided in another statute which allows a township board, on petition of 51 percent of the record landholders to set up a special assessment district for the supplying of water for fire protection and other purposes. The water is to be supplied by contracting with a city or village. Under this statute, 50 percent of the cost is to be paid from the township contingent fund. The township meeting may vote an additional amount if necessary, or authorize the township board to issue bonds. Bonding and taxing provisions of this statute are complex and should be consulted by board members contemplating acting within its terms.¹³

Contracting for Services

If the population of the township is five thousand or over, the board by a two-thirds vote may contract with any city or village for water supplies, borrowing sums of up to \$250,000 to set up water supply facilities. In so borrowing, it can issue notes which then can be paid off from state sales tax receipts. The full faith and credit of the township may not be pledged on these notes. If 10 percent of the electors petition for a referendum on the water issue, a referendum can be held if the township board desires.¹⁴

Township and Village Improvement Act

When acting under the provisions of the township and village improvement act,¹⁵ township boards may act only under certain conditions, and only on petition of 65 percent or more of the record owners of the land affected. Any water-works established under these provisions of this act are to be under the control of a board of public service commissioners which is to be chosen by the township board at its annual meeting.¹⁶

Limitations on special assessments are set by the township and village improvement act, and these limits must be followed when action is being taken under the statute. Special assessments must not exceed 15 percent of the assessed valuation in any one year, and not over 45 percent total. Assessments for paving, streetmarkers, and lampposts may be spread into ten annual installments, those for sewers and water mains over thirty annual ones, and those for waterworks or sewage disposal plants over forty.¹⁷

Public Authorities — The Problem

In recent days local units in every state have been faced with the necessity for supplying many new services. Not so long ago the average township resident was content to supply himself with water from his own well or to pump it from the ground himself; he was content with a cesspool, dry well, or septic tank for domestic waste products. He did not care about having well-paved roads, sidewalks, hospital and health facilities, mental institutions, and similar services. But those days are no longer with us. Hardly a day passes but that the supervisor or the township board member is asked on the street about supplying one or the other of these services. Townships have done their best in most cases to meet the wishes of the townspeople. However, problems such as those entailed in supplying a large, well-equipped hospital with skilled surgeons and the most modern instruments, or supplying pure water which may require that a lake or spring many miles from the township be tapped, are often beyond the capabilities of the township board both to finance and to manage. All over the country, in large city and in small town, in great port or in flood-affected area, it has been found necessary or desirable that some larger governmental unit should be created encompassing a large enough number of people and a large enough territorial area so that these services can be supplied economically and feasibly. The growth of authorities is noted everywhere, such as the Port of New York Authority, the Boston Metropolitan District Commission, and the proposed Cleveland Metropolitan District, all with this same end in mind — to take off the hands of harrassed local officials a problem either too expensive, too administratively-demanding, or one which only a large population or area would make feasible.

Authorities Allowed by Statute in Michigan

With these ends in mind, the Michigan legislature has authorized townships to join together with other municipalities to form authorities to meet certain needs — to supply library, hospital, water, sewage, fire prevention, airport, and other facilities to meet local problems. Some of these have already been discussed under appropriate heads elsewhere in this manual.

Organizing and Financing the Authority; Its Powers

When first organizing an authority for sewage disposal or water supply, the township boards and other legislative bodies affected must approve the articles of incorporation and publish them in local newspapers. Statutory requirements must be followed closely.¹⁸ Once organized, a water supply and sewage disposal authority has broad powers. It can buy, sell, lease, build and take other necessary steps. It may sign contracts with the participating local units and set up provisions for allocating costs among them. In setting up the authority, township boards can in some instances pledge the full faith and credit of the township, and may use special as-

assessment charges or rates, sales tax receipts, other state aid, and other available funds to help finance it.¹⁹ The authority itself may issue annually-maturing serial bonds in negotiable form on the full faith and credit of the authority members. Similarly, the authority may issue self-liquidating revenue bonds. But the authority has no taxing power itself. Any funds which are not raised by bond issues must be voted by the township boards or other local unit governing bodies, either from general funds or from tax assessments.²⁰ A township desirous of joining an authority once it is organized may do so after approval by its own township board and by all of the other component local governmental units already members.²¹ If a township prefers not to join an authority, but rather merely to contract with it for services, it may do so by township board resolution. This resolution is final unless 10 percent of the voters file for a referendum.²²

Power of the Board to Contract for Sewer Service

Without forming an authority as such, a township can make contracts with any other political subdivision relating to sewer systems and sewage disposal. It may join with other governmental units to issue joint revenue bonds to construct, acquire, extend or improve such facilities, but such bonds are to be payable solely from the revenue of the system.²³ Action can be taken by the township board alone, with no referendum necessary.²⁴

Change of Political Borders and Effect on Services

If a change of borders places part of a neighboring political subdivision's water or sewer system within the township, the township board can pass an ordinance to take ownership. However, it must first submit the question to the electors and secure a three-fifths vote approving of the measure. If such approval is secured, followed by the necessary ordinance, the two governmental units must set up a governing board for joint operation of the system. The governmental units may contract in any fashion for operation of these facilities either by one unit, by one unit for the benefit of all, or by a joint board. They may apportion indebtedness, issue joint revenue bonds, refunding bonds, and otherwise exercise the usual financial powers. If bonds are issued, the existing operation must continue jointly until the bonds are either paid off or otherwise provided for.²⁵

Other Water and Sewer Powers

Statutes discussed at the beginning of this chapter also give townships power to construct, repair, and extend, sewage disposal systems and water supply systems. Under these statutes the township board can also, if it prefers, act in concert with other local governmental units in supplying water and sewage systems. The township board of a township having a revenue bond water system may provide by resolution that a special assess-

ment be levied within the district served by such water system, water mains, and fire hydrants. It may also provide that any portion of the cost may be paid from the general fund. But regardless of how it decides to act, a public hearing must be held. The board may from time to time change and modify assessments as it deems equitable and fair in accordance with benefits.²⁶

Public Improvement Fund Authorized

The township board may set up a fund for acquiring, extending, altering, or repairing public improvements previously authorized. The money in this fund cannot be transferred, encumbered, or used for any other purpose than that originally designated. The township board may allocate to this fund miscellaneous revenues not otherwise pledged or encumbered.²⁷ Although this fund may be used as outlined in this statute for public improvement purposes, it is not a building fund as defined in MCL 1948 s. 141.51, MSA s. 5.671, and following sections of the statutes.²⁸

The Water Pollution Problem; Board Powers

Water pollution is a problem closely allied to water supply systems and sewage control. Township boards may apply for and accept federal grants or any other grants or contributions, from private industry or otherwise, to aid in preventing or abating water pollution. The board may contract and agree freely with industries concerning sewage and industrial waste disposal, and the township itself can contract to dispose of industrial wastes to abate water pollution in return for periodic payment by industry of amounts determined by the township board to be adequate to cover the cost.²⁹

Street Lights

The township board may vote not over ten thousand dollars in any one year for street lights, outside of incorporated cities and villages. In townships with an assessed valuation of one million to fifteen million dollars, not more than three thousand dollars may be spent in one year.³⁰ Any state highway or county road may be lighted outside the limits of incorporated cities and villages.³¹ In the case of state roads, permission of the state highway commissioner must be obtained,³² and presumably under the new county road legislation, the county road commissioner's approval would have to be secured before a township could install lights on a county road.

The township board may discontinue lighting on its own motion, or following petition by ten freeholders of a special assessment district if such a district had been set up.³³ The state is under no obligation to light highways, and townships can not require that it do so.³⁴

Financing of Street Lighting

Financing of street lighting can be from contingent funds, or by special assessment. Such special assessment can either be ordered by the township board itself on its own initiative, or after petition by at least ten freeholders of the proposed assessment district. Public notice and a hearing are necessary.³⁵

Agreement With Other Local Units; Lighting Bridges

The township board may proceed at its own expense to light highways, or it may make agreements with the county or with other local units for lighting.³⁶ If a bridge is located between two or more townships, the township board of each one must approve the lighting at a joint meeting. Expenses may be apportioned.

Townships have broad powers in the street lighting area to act "where deemed advisable" as far as county and local roads are concerned. They may enter into contract with any individual, firm, or corporation for not more than ten years for lighting, or may join with any other local unit to do so. They may contract for extension of lines or service for lighting purposes.³⁷

Township Halls and Public Buildings

The location of a township hall should be chosen by the electors of the township rather than by the township board.³⁸ It should be within the township limits, since township meetings must be held within such limits.³⁹ However, where buildings of a township later are enclosed within a village or city, the township may continue to use them for all purposes, including elections and meetings.⁴⁰

Financing of Public Buildings

To secure money to build a township hall, the board may upon application by twelve freeholders, borrow money by issuing bonds. However, the amount is limited to $2\frac{1}{2}$ percent of the township's assessed valuation.⁴¹ Where bonds are issued, the township board must impose additional taxes adequate to pay off the bond charges, such taxes to be collected at the next regular tax collection.⁴² The electors themselves, at any township meeting, may vote up to 1 percent of the township's assessed valuation per year for township buildings for public use. Twelve freeholders must sign and post a notice of intent to raise such money before the vote can be taken.⁴³ For maintenance of the township hall and other public buildings, the voters at the annual township meeting may vote a tax up to one-twentieth of 1 percent of assessed valuation.⁴⁴

Public Building Authority Authorized

If it prefers, the township may incorporate an authority for the purpose of acquiring, furnishing, equipping, owning, improvising, enlarging, operating, or maintaining any buildings or sites for the use of the township.⁴⁵ This would appear to offer certain financial advantages since the independent authority would not be subject to the same bond limit provisions as would the township. The township board must give its consent to the incorporating of such an authority, and the supervisor and clerk of the township must serve as executive officers of the body.⁴⁶ But other members of the township board are not eligible to serve on the authority.⁴⁷

Board May Join or Contract With Other Local Units Relative to Public Buildings

The township may join with any other unit of local government to acquire sites or buildings for joint use.⁴⁸ By contract, approved by the township boards of the units involved, they may agree to build, condemn, construct, lease, sublease, maintain, and otherwise provide for such buildings. Any local government unit may proceed alone where other units have merely contracted with it to rent portions of the building involved. Acting in concert, the local units may tax or issue general obligation bonds or self-liquidating revenue bonds,⁴⁹ but the statutory provisions are so complex that townships contemplating such a scheme should first consult the statutes and then confer with a bond attorney.

Leasing Buildings

The township hall may be used for other purposes than township ones, where its primary use is a town hall and the leased portion is not necessary for township purposes.⁵⁰ Various civic groups may be permitted to use the hall from time to time for meetings and the like. But the problem has become a little more thorny when township boards have leased portions of the hall or of other public buildings for longer periods of time to business interests or even to semi-public groups. The township board itself has no power to lease township-owned land, but the electors may direct the board to lease, if it will not interfere with the regular use of building located on the land. Thus the attorney general has even upheld a lease of a portion of the township hall site for drilling for oil where such drilling did not interfere with the regular use of the hall.⁵¹

Farm Scales; Soil Conservation

The township board has various additional powers. It may establish and administer township scales for weighing farm produce and for other purposes.⁵² And it may cooperate with local soil conservation districts, though it is forbidden to appropriate funds to such districts, to enable it to carry out erosion control measures within the township.⁵³

Footnotes

1. MCL 1948 s. 41.411, MSA ss. 5.2411 and following.
2. M. Pub. Acts 1957, no. 153.
3. M. Pub. Acts 1957, no. 251.
4. M. Pub. Acts 1957, no. 203.
5. M. Pub. Acts 1957, no. 187.
6. Op. Atty. Gen. 1952-54, p. 61, no. 1561.
7. Op. Atty. Gen. 1949-50, p. 438, no. 1090.
8. M. Pub. Acts 1956, no. 111.
9. Op. Atty. Gen., 1951-52, p. 366, no. 1470.
10. Op. Atty. Gen., 1955, p. 192, no. 2047.
11. MCL 1948 ss. 41.721-41.737, MSA ss. 5.2770 (51)-(67), as amended by M. Pub. Acts 1957, 187, and M. Pub. Acts 1956, no. 111.
12. MCL 1948 ss. 41.351-41.356, MSA ss. 5.2585 (1)-(6).
13. MCL 1948 ss. 41.391-41.398, MSA ss. 5.2591-5.2598.
14. MCL 1948 ss. 41.871-41.878, MSA ss. 5.2600 (1)-(8).
15. MCL 1948 ss. 41.411, MSA ss. 5.2411 and following.
16. MCL 1948 ss. 41.413a, MSA ss. 5.2413a.
17. MCL 1948 s. 41.414, MSA s. 5.2414.
18. MCL 1948 ss. 124.281-124.294, MSA ss. 5.2769 (51)-(64).
19. Same as footnote 18.
20. Same as footnote 18.
21. Same as footnote 18.
22. Same as footnote 18.
23. MCL ss. 123.231-123.235, MSA ss. 5.2769 (1)-(5).
24. *Oakland Co. Drain Comr. v. City of Royal Oak*, 1943, 306 M. 124, 10 N.W. 2d 435 and MCL 1948 s. 123.234, MSA s. 5.2769 (4).
25. MCL 1948 ss. 123.331-123.347, MSA ss. 2769 (21)-(37).
26. MCL 1948 ss. 41.831-41.841, MSA ss. 5.2770 (31)-(41).
27. MCL 1948 ss. 141.261-141.265, MSA ss. 5.2770 (1)-(5).
28. Op. Atty. Gen., 1943-44, p. 697, no. 0-2037.
29. MCL 1948 ss. 323.101-323.103, MSA ss. 5.2770 (21)-(23).
30. MCL 1948 ss. 41.251-41.256, MSA ss. 5.2481-5.2486.
31. Same as footnote 30.
32. MCL 1948 s. 41.262, MSA s. 5.2492.
33. MCL 1948 s. 41.253, MSA s. 5.2483.
34. Op. Atty. Gen., 1935-36, p. 192.
35. MCL 1948 ss. 41.251-41.256, MSA ss. 5.2481-5.2486.
36. MCL 1948 s. 41.261, MSA s. 5.2491.
37. Same as footnote 36.
38. Op. Atty. Gen., 1913, p. 429; Op. Atty. Gen. 1933-34, p. 72.
39. Op. Atty. Gen., 1914, p. 535.
40. MCL 1948 s. 41.221, MSA s. 5.2378.
41. MCL 1948 s. 41.241, MSA s. 5.2371.
42. MCL 1948 s. 41.245, MSA s. 5.2375.
43. MCL 1948 s. 41.231, MSA s. 5.2361.
44. MCL 1948 s. 41.246, MSA s. 5.2376.
45. MCL 1948 s. 123.951, MSA s. 5.301 (1).
46. MCL 1948 s. 123.952, MSA s. 5.301 (2).
47. MCL 1948 s. 123.953, MSA s. 5.302 (3).
48. MCL 1948 s. 123.921-123.925, MSA ss. 5.2351-5.2355.
49. MCL 1948 s. 123.925, MSA s. 5.2355.

50. Big Prairie Tp. v. Big Prairie Tp. Grange no. 935, 1938, 286 M. 268, 282 N.W. 143; Dyer v. Burns Tp., 1924, 228 M. 513, 200 N.W. 247; Op. Atty. Gen., 1928-30, p. 881.
51. Op. Atty. Gen., 1933-34, p. 366.
52. MCL 1948 s. 41.491, MSA s. 5.2401.
53. Op. Atty. Gen., 1952-54, p. 11, no. 1565.

CHAPTER 11

Libraries, Nuisances, Bands and Miscellaneous Provisions

Libraries

Townships have broad powers to provide library service for township residents. They may set up their own library system, build necessary buildings, contract with the county, join together with other cities or towns, and in general are empowered to act in almost every conceivable fashion to provide proper reading and reference facilities.

Library Contracts with Other Local Units; Financing the Library System

Townships may contract with any other township, village, or city for that unit to extend its services to the township. A petition of 10 percent of the electors addressed to the board initiates the procedure, and if approved in referendum in the township meeting or at the election, all formalities are taken care of. There is a one-mill tax limit provided by statute for such purposes. The township treasurer is to pay the agreed sum over to the proper officer of the other local unit. The contract is to be made for three years, and is extended automatically without action by either party thereafter. It may be concluded thereafter only by proper notification by either party six months before termination.¹ Sales tax distribution may be used by the township for library purposes in lieu of a tax, where the electors approve.² The township board must appoint a library board of six directors after adoption of the library proposal, but thereafter, the directors are to be elected.³

State Aid to Libraries; Establishing Township Library

Certain state aid is available to township libraries.⁴ Under one portion of the statutes,⁵ fifty voters may petition for the establishment of a library, specifying sums to be spent, with a one-mill limit. The petition is to be delivered to the township clerk, who is to submit the proposal for the approval of the voters. If approved, the tax is to be levied and a library to be set up. All powers given to cities in the library code are granted to township boards.⁶ Once such a library is approved, the board may not submit to the electors the question of rescinding the vote to establish the library, and the electors have no power to rescind a previous approving vote.⁷

Borrowing for Library Purposes; Contracts with County

Under other statutory sections, townships are empowered to establish libraries, borrow money and issue bonds for the purpose, purchase sites, build, and so on. Twenty-five electors must petition for such an undertaking. If the township board decides to borrow for the purpose by means of bonds, the board must present the question to the electors for approval, either at meeting or on the ballot.⁸ The township may contract with the county for library service.⁹ In pursuance of this contract, the township may establish a free public library at any time after signing the contract, and may continue or terminate the contract as the parties may agree.¹⁰

Consolidated Library Systems

Township boards in adjoining townships in the same county may consolidate their library systems, and may jointly purchase a site for the purpose, build, and so on. This joint library is placed directly under the control of the two or more townships boards. When the boards involved cannot agree on an issue, the county commissioner of schools is empowered to make the decision. The procedure for consolidating library systems or establishing a joint system is initiated by a petition of twenty-five voters. Upon receiving such a petition, the township board must submit the question to the electors.¹¹

Township May Contribute to Private Library Open to Public; May Join in a District Library System

The township is also permitted to make a contribution, up to one-half mill of assessed valuation, to support or help support a private library within its borders, where the library is open to public use under reasonable terms.¹² Townships may also join with any other unit or units of local government to establish a district library system.¹³ Naturally, the townships are given all authority necessary for them to establish a smoothly working system, as for instance, power to accept donations of money, books, and so on, to buy and sell library and related materials which are necessary,¹⁴ to contract with other library systems for cooperation or convenience, to make arrangements for lending, borrowing, joint purchase, etc., to minimize duplication and expense.¹⁵

Electors May Transfer General Funds to Build Library

Transfer of unearmarked township funds, to construct a library building may be authorized by vote of a township meeting. However, by special provision, neither this transfer nor a levy of tax for support of the library may be voted on at the biennial township election. Only voters having the named qualifications may vote on these questions.¹⁶

Lake Weeds

The township board is given power to control the growth of weeds in inland public lakes. Upon the receipt of a petition signed by twenty-five freeholders of the township, the board may provide money from the general or contingent fund for the control of such weeds.¹⁷ The board may join with other township boards for the same purpose, and may appropriate money as above, where the lake is within two or more townships.¹⁸ However, no poisons or other chemicals likely to cause harm to wildlife may be used without the consent and supervision of the Department of Conservation.¹⁹

Liquor

The township board has no power to suppress the liquor traffic, or sales of alcoholic beverages, either in bulk or by portion, either as a nuisance or otherwise,²⁰ except that no liquor license may be granted in the township without the board's approval, and it can prevent the renewal of an old license.

Board May Employ Attorney

The township board may hire an attorney to assist in legal problems, to aid in ordinance-drafting, or for any other proper purpose. Though there is no such thing as a township attorney, the board may retain a lawyer to prosecute ordinance violations. The attorney so employed may also serve as the prosecuting or assistant prosecuting attorney of a city.²¹

Holiday Celebrations

The board may spend money for the proper celebration of armistice, memorial, independence, or decoration day, but apparently may not spend over one hundred dollars for the purpose, because though cities of larger population are allowed to spend more, townships are mentioned only in the groups of local government units with population less than five thousand, which are limited to the one hundred dollar expenditure.²²

Board May Undertake Extension Plan With M.S.U.

The board may cooperate with Michigan State University to provide for agricultural extension work and to promote agricultural interests, and for that purpose may enter into agreements and appropriate money, taxing as necessary for the purpose. A referendum may be held on the question, and the plan is to go into effect only on approval of the electors. The board may make the referral, or a petition of 10 percent of the electors addressed to the board requires it to submit the question to the electors. Upon a petition of 10 percent of the electors, the board must submit the question of termination to the electors.²³

Electors May Establish Band

A township band may be established upon approval by the electors of a petition signed by 10 percent of the voters. The board may levy an annual tax of not over two mills for maintenance and employment of the band. The band may be discontinued in much the same way, after a petition of 10 percent of the electors submitted to the board at least sixty days prior to the time of submission of the question to the electors.²⁴ The band may not be discontinued in any other way, and the board is powerless to end the band by its own act.²⁵

Township May Receive Gifts;

The township may receive gifts for any public purpose, directly or in trust, and subject to any conditions, limitations, etc., of the document. The gift is valid if the intent is clear, despite the informality in a will, and such gifts are made valid despite any other statute to the contrary and despite the rule against perpetuities.²⁶

Rights of Common and Limitations

Townships can make cattle free commoners, giving them the right to graze on township-owned land or along the roadsides. But they cannot give authority to graze cattle on the roadbed of a railroad running through the township, since such a road is not an ordinary highway nor a public common.²⁷

Footnotes

1. MCL 1948 ss. 87.17-87.18, MSA ss. 15.1674-15.1675.
2. Op. Atty. Gen. 1952-54, p. 200, no. 1663; 1952-54, p. 273, no. 1725.
3. MCL 1948 s. 397.211, MSA 15.1672.
4. See MCL 1948 s. 397.101-397.113, MSA ss. 15.1791 (1)-(15).
5. MCL 1948 s. 397.210, MSA s. 15.1670.
6. Same as footnote 5.
7. Op. Atty. Gen. 1918, p. 179.
8. MCL 1948 ss. 397.321-397.326, MSA ss. 15.1711-16. See also MCL 1948 ss. 397.241-397.246, MSA ss. 15.1681-15.1686.
9. MCL 1948 s. 397.305, MSA s. 15.1705.
10. Op. Atty. Gen. 1945-46, p. 325, no. 0-3521.
11. MCL 1948 ss. 397.351-397.358, MSA ss. 15.1721-15.1728.
12. MCL 1948 s. 397.371, MSA s. 15.1741.
13. MCL 1948 ss. 397.271-397.275, MSA ss. 15.1780 (1)-(5).
14. MCL 1948 ss. 397.381-397.382, MSA ss. 15.1751-15.1752.
15. MCL 1948 ss. 397.471-397.472, MSA ss. 15.1792 (1)-(2).
16. Op. Atty. Gen. 1955, p. 141, no. 1999, interpreting Const. 1908, Art. III, s. 4.
17. MCL 1948 s. 41.671, MSA s. 5.265 (1).
18. MCL 1948 s. 41.672, MSA s. 5.265 (2).
19. MCL 1948 s. 41.673, MSA s. 5.265 (3).
20. Gable v. Three Oaks Tp. Bd., 1914, 182 M. 659, 148 N.W. 710.
21. MCL 1948 s. 41.661, MSA s. 5.47, Op. Atty. Gen. 1945-46, p. 194, no. 0-3068.
22. MCL 1948 s. 123.851, MSA s. 5.3381.

23. MSA ss. 5.264 (1)-(3) (new).
24. MCL 1948 ss. 123.861-123.863, MSA ss. 5.3391-5.3393.
25. Op. Atty. Gen. 1930-32, p. 229.
26. MCL 1948 s. 123.871, MSA s. 5.3421. *Loomis v. Mack*, 1915, 183 M. 674, at 686, 150 N.W. 370; *Lake Superior Dist. Power Co. v. City of Bessemer*, 1939, 288 M. 455, 285 N.W. 20; *Greenman v. Phillips*, 1928, 241 M. 464, 217 N.W. 1.
27. *Williams v. Mich. Central Ry. Co.*, 1851, 2 M. 259.

CHAPTER 12

Legal and Constitutional Affairs

Use of Township Records in Court

All regulations, resolutions, ordinances, and other official papers of a township may be read in evidence before all Michigan judicial and administrative tribunals. It is to be noted, however, that the upper courts do not take judicial notice of township ordinances and resolutions, and there must be proper presentation of official texts of the ordinance or resolutions by the attorneys involved.¹

Military Service and Veterans' Provisions

A township must reemploy veterans who were employed by the township before induction into the service, and must reemploy these men in the same or similar capacities as those formerly occupied. Such reemployed veterans are guaranteed against discharge except for good cause for one year after rehiring, and must have their job seniority reckoned as if the time spent in service had been spent on the job in the township. All benefits are to be given to the veteran as if he had been employed by the township during his period of service, provided that he continues any payments due to the proper benefit fund during his time in service, or makes them up in one lump sum upon his reemployment or shortly after. The statute provides that no more than six years credit toward retirement may be accrued in this way.² Townships also are required to grant leaves as necessary to national guardsmen and militiamen, and to members of the armed services, to allow the persons to meet their military obligations.³

Legal Liability of Townships

The same law which applies to the acts of county officers and other county agents also applies to township officers and agents.⁴ Court costs awarded against the persons making up the township board, where they have acted in their official capacities and caused a private person to bring suit, are to be reckoned as township charges, and are to be collected as such, and not from the township officers individually.⁵ Note that a township is responsible only for its own debts and for the acts of its own officers. A new township set off from the old one cannot be held responsible on a judgment passed down on a cause of action which arose before the division. Even though it might seem that the claim of the person injured attaches to all the assets of the old township, this is not so, and

only the part remaining is liable unless the new township is joined as a defendant in the law suit itself,⁶ or has been assigned or has accepted a set part of the debt of the original town.

Township Contracts — Problems; Personal Liability of Board Members

Where the township has power to contract, and in the absence of any showing of criminal intent, the township will usually be held liable on its contract even though it may have proceeded irregularly and in disregard of "directory" provisions of the relevant statutes.⁷ But township officers should adhere strictly to statutory provisions for receiving bids, analyzing ability to perform on the part of contractors, and so on, since the tendency in this area is to hold contractors and township officials personally liable where statutory requirements are ignored by them. It is entirely possible for township board members to be held personally responsible to citizens or to a contractor who may have been injured by township board action. In this case, the township has no power to pay the judgment rendered against an individual board member.

If a contract requires the vote of the electors of the township, and the board neglects to submit the issue to them before performance is started, the contract may be ratified by submitting the issue to the voters as soon as possible. The contract then is as valid for all purposes as if the submission to the electors had occurred when specified in the statute.⁸ There is a presumption of legality in all actions of township boards or officials where the board has power to act in a particular area, even though some minor provision might have been overlooked.⁹ However, the township is not estopped by the acts of its officers, is not liable in implied contract generally, and is not liable at all except in extraordinary cases on an invalid contract.¹⁰ It is obvious that any other course would present grave dangers of collusion or disregard of law by township officials or others. Quasi-contractual recovery has been allowed, but is rare.¹¹ Where a previous township board has made a certain contract, and the contract has been performed by a person in accord with the contract, the new board cannot avoid paying by saying that it disapproves of the contract, or that it thinks that the action of the past board was unwise or not in accordance with the wishes of the voters. Where the township has made a contract and received the benefit of performance, it must pay the agreed price.¹²

Township Tort Problems

In the tort area (that is, the area where a person may be injured by the negligent or intentional acts or omissions to act of township agents) the township is liable for all injuries which may occur in public places,

such as crosswalks, public parks, and perhaps on roads, highways, bridges, culverts, and so on. Since one of the prerequisites before tort liability may be imposed on anyone is that that person should have control of and authority over the facility and be under a duty to keep it in repair, it is likely that the series of acts by which control over township roads and street installations of all types was turned over to the counties has ended liability in these areas on the part of the townships. The statutes themselves are confused and contradictory, and only future actions of the courts and the legislature will clarify the question.¹³ Where a township officer, such as a policeman, is authorized to call upon a person for assistance, the township is liable where the person is injured while helping. The rules as to workmen's compensation govern the treatment and the award of damages in such cases.¹⁴

Governmental and Proprietary Functions

Courts distinguish between "governmental" and "proprietary" functions in considering the tort liabilities of a governmental body. A governmental function is one connected with the day-to-day necessary affairs of a governmental unit; a proprietary function is one which could be as well performed by a private person or organization and is, in a good many places. Court decisions in this area are by no means clear, and what is a governmental function in one state is often found to be a proprietary function in another, and vice versa. The distinction is of primary importance to the township because normally in the case of governmental functions, a governing unit is responsible only for intentional or grossly negligent acts of its agents, but not for mere negligence. If the function is proprietary, normal tort rules apply and no sovereign immunity notions intervene.

Taxpayers' Suits Authorized by Statute

Taxpayers are given certain rights against their townships by statute. Any resident taxpayer may sue in the name of the township treasurer for an accounting for or recovery of funds which he suspects have been misappropriated or unlawfully expended by the supervisor or other township officers.¹⁵ In the school district area, any five resident taxpayers who think themselves aggrieved by acts of their township board or boards relating to the formation, division, or consolidation of a school district, may appeal directly to the county circuit court for a ruling on any decision of the township board. Notice of the appeal is given to the township clerk, who then notifies board members.¹⁶

Vandalism

The township is given some protection against vandalism by juveniles in special statutory provisions which allow the township to recover damages, up to three hundred dollars in a proper court action, from the parents

of a child under eighteen who is living with them, and who is responsible for malicious destruction of township property.¹⁷ This action against the parents is in addition to the normal procedures by juvenile authorities.

Board Has Power to Settle Disputes

The township board may "settle out of court" just as an ordinary citizen may when a legal claim is lodged against him. The board has absolute discretion in settling even dubious or troublesome claims, as long as there is some basis for the action against the town, and an issue is honestly in dispute. Where such an honest dispute exists, the township officers may agree to a settlement with a taxpayer which will bind the township.¹⁸ No formal papers, pleadings, or the like are necessary, and the mere presentation of the claim gives the board the power to act on it, and to determine whether the claim is a valid township charge or not.¹⁹ The board alone has this power, and town meetings cannot audit private claims against the township by vote of the electors.²⁰ The decision of the board is only an offer to settle the dispute, and such decision is not binding unless it is accepted by both parties.²¹ Such a decision and agreement by the township board has been held to be a judicial act, so that members of the board are not individually liable where they have made a mistake in allowing claims.²²

Where the complaining person has submitted his claim to the board, which then considered it and allowed part of it, the person may still bring suit against the township for the remaining part of his claim, as long as he did not agree that the amount voted was payment in full for his claim.²³ Where costs are awarded against individual members of the board after a person has gone to court, obtained a review of the official acts of the members, and secured a judgment against them, such costs are to be considered as township charges. Of course, it is necessary that board members should have acted in good faith and to the best of their knowledge before the town can pay off such judgments.²⁴

Board Has Power to Vote Money in Settlement of Claims

No action by a town meeting is necessary in these cases, since the board has authority by statute to raise money to pay such claims audited and allowed against the township, without vote of the electors.²⁵ Likewise, the board may raise money to pay off a judgment issued by a court against the township. If necessary, bonds may be issued to enable the town to pay. The creditor presents his petition for payment to the board, after which the board may decide to issue bonds to secure payment. However, these bonds may be issued only where two-thirds of the electors approve at a town meeting or at a special election.²⁶ The town cannot avoid payment of such a judgment claim, and the courts will order a sufficient tax levy

to be assessed to meet payment of such a claim where the town refuses to take proper steps.²⁷

To return to the matter of a claim presented to the board which has decided to allow it and to provide for a certain payment, the supervisor, as chairman of the board, should countersign the order for the amount of the payment of the claim duly audited and allowed by the majority of the board, without regard to his own opinion. He is not personally liable, and he must honor such action. If any dispute arises thereafter, the courts will decide the issue.²⁸

Township May Only Settle Claims Against Itself

Each unit of local government is responsible for its own charges and claims. For instance, the board cannot make a district charge into a charge upon the township.²⁹ Neither the state legislature nor the county board of supervisors can review a claim against the township, or receive such claims from persons aggrieved, and neither may declare such a claim just and order the township to pay.³⁰ The township is not liable for a debt not created lawfully by the vote of the electors, nor ratified, nor upon a claim not allowed by its own board.³¹

Footnotes

1. MCL 1948 s. 617.26, MSA s. 27.875 (s. 26 Judicature Act); *Zawicky v. Flint Trolley Coach Co.*, 1939, 288 M. 655, 286 N.W. 115.
2. MCL 1948 ss. 35.351-35.356, MSA ss. 4.1486 (1)-(6); *Borseth v. City of Lansing*, 1953, 338 M. 53, 61 N.W. 2d 132.
3. MCL 1948 ss. 32.271-32.274, MSA ss. 4.1487 (1)-(4).
4. *Stockwell v. White Lake Tp. Bd.*, 1871, 22 M. 341.
5. *Maffei v. Berrien County*, 1940, 293 M. 92, 291 N.W. 234.
6. *Hale v. Baldwin Tp. Bd.*, 1882, 49 M. 270, 13 N.W. 586; *Pierson Tp. v. Reynolds Tp. Bd.*, 1882, 49 M. 224, 13 N.W. 525.
7. *Webb v. Wakefield Tp.*, 1927, 239 M. 521, 215 N.W. 43; *McNicholas v. Wakefield Tp.*, 1927, 239 M. 521, 215.43. See also *McGaughan v. W. Bloomfield Tp.*, 1934, 268 M. 553, 256 N.W. 545.
8. *Ruhatt v. Wakefield Tp.*, 1927, 239 M. 536, 215 N.W. 38.
9. *Big Prairie Tp. v. Big Prairie Tp. Grange no. 935*, 1938, 286 M. 268, 282 N.W. 143.
10. *Mackey v. Columbia Tp.*, 1888, 71 M. 227, 38 N.W. 899.
11. *Ruhatt v. Wakefield Tp.*, footnote 8.
12. *McGaughan v. W. Bloomfield Tp.*, footnote 7.
13. *Buhler v. City of Detroit*, 1936, 274 M. 139, 264 N.W. 319.
14. MCL 1948 ss. 123.401-123.403, MSA ss. 5.3431-5.3433.
15. MCL 1948 s. 129.61, MSA s. 5.3281. See also *Putnam v. City of Grand Rapids*, 1885, 58 M. 416, 25 N.W. 330 and *Baldwin Manor, Inc. v. City of Birmingham*, 1954, 341 M. 423, 67 N.W. 2d 812.
16. MCL 1948 ss. 361.1-361.3, MSA ss. 15.517-15.519.
17. MCL 1948 ss. 692.661-692.662, MSA ss. 27.1408 (1)-(2).
18. *Feily v. Bay View Campgd. Assn. of M.E. Church*, 1920, 210 M. 197, 177 N.W. 485.

19. Wall v. Trumbull, 1867, 16 M. 228.
20. People ex rel. Gale v. Onondaga Tp. Supervisor, 1867, 16 M. 254.
21. Wilkinson v. Long Rapids Tp., 1889, 74 M. 63, 41 N.W. 861; Van Wert v. School Dist. 8, Adams Tp., 1894, 100 M. 332, 58 N.W. 1119.
22. Wall v. Trumbull, footnote 19.
23. People ex rel. Gale v. Onondaga Tp. Supervisor, footnote 20; Van Wert v. School Dist. 8, footnote 21; Wilkinson v. Long Rapids Tp., footnote 21. See also Marathon Tp. v. Oregon Tp., 1860, 8 M. 372.
24. Stockwell v. White Lake Tp. Bd., footnote 4.
25. Wisner v. Davenport, 1858, 5 M. 501.
26. MCL 1948 ss. 691.731-691.737, MSA ss. 27.1671-27.1677.
27. Morley Bros. v. Carrollton Tp. Supervisor, 1945, 312 M. 607, 20 N.W. 2d 743.
28. Op. Atty. Gen. 1914, p. 309.
29. McFarlan v. Cedar Creek Tp., 1892, 93 M. 558, 53 N.W. 782.
30. People ex rel. Gale v. Onondaga Supervisor, footnote 20; People ex rel. Turck v. Wright, 1869, 19 M. 351.
31. French v. S. Arm Tp., 1900, 133 M. 593, 81 N.W. 557. See also Morley Bros. v. Carrollton Tp., 1943, 305 M. 285, 9 N.W. 2d 543.

CHAPTER 13

Parliamentary Procedure for Board Members

General

For the orderly conduct of town board meetings, members should attempt to gain a basic knowledge of parliamentary procedure. The following outline, based largely on Roberts' *Rules of Order*, may be of help to board members not previously familiar with the conduct of meetings. The authors have drawn as well on Professor Albert Keiser's fine manual entitled *Parliamentary Law for Students*.¹

Quorum

In order that an official meeting can be held, it is necessary that a quorum, that is, the established legal minimum, of the members be present. It is not necessary that each vote be by this quorum number of members. As long as enough members are present, it does not matter how many vote on the subject unless otherwise required by statute. Without the quorum, no official business can be conducted. The quorum is three members for the usual five-man board, and four members for the seven-man board.

Recognition

After the meeting is called to order, the roll taken, minutes of the last meeting read, committee reports made, and old business cleared away, the meeting is ready to turn to new matters. When a member wishes to obtain the floor, he rises or holds up his hand, and says "Mr. (or Madam) Chairman," and waits for the chairman to recognize him by speaking his name, or indicating that he is to speak in some other way. When two persons ask for the floor simultaneously, the chairman has the option of recognizing the one he wishes. However, the chairman should be impartial, and should not attempt to use his position to overcome or "bulldoze" the opposition. The chairman should try to get all views into the discussion, and should try to recognize members who have not yet spoken, or who are particularly well-qualified to speak on the point. If the chairman of a committee which has dealt or will deal with the proposal asks to speak, he should be recognized first, as should the person who introduced the proposal or made the motion. Once the person has been recognized, the chairman should give him full opportunity to speak, should not cut him off, and should insist on order if other persons make a disturbance.

All persons who wish to speak should be recognized, unless they have repeated the same statement over and over, or for other good reason. Unjustified refusal to recognize may be appealed to the members present, one person moving that X be recognized, and another person seconding. The chairman must proceed to a vote immediately without further discussion or delay, and if he refuses to do so, he should be removed from his seat. Chairmen at board meetings have no privilege to be petty dictators. They are in their chairs to maintain order and assist in the presentation of all views to the members. Even a member voicing an unpopular view is privileged to speak for a reasonable time.

Motions

A member who wishes to put a matter before the board should rise or should state clearly and formally "I move that", which is the better form, or "I make a motion that". Important resolutions or motions, and particularly proposed ordinances, should always be in writing, and should be handed to the chairman or the clerk. Upon receiving a motion, the chairman should read it if it is written, in a loud, clear voice, or if it is oral, he should repeat it loudly and clearly, so that all members may know what issue is to be discussed. The chairman should not permit aimless discussion not related to the matter on the floor at the present time, and should not hesitate to remind members that only the subject at hand should be discussed. Likewise, if there is no motion on the floor, there is no proper discussion, and the chairman should ask for a motion before permitting talk, unless a committee report, report from a town official, or the like, is before the meeting.

After the chairman has read the motion, it may not be withdrawn, though it may be seconded or amended. The mover is presumed to be in favor of his motion, and should have first chance to speak on it, and also to sum up just before the vote. If a member merely introduces a motion to which he is opposed for someone else, he may not speak at length on it, and neither may the seconder, though both may make a bare statement of their opinion on the matter. Often, a substantial citizen or other interested person will ask a member to introduce a motion to a certain effect. The member should not hesitate to do so where the idea is worthy of consideration, even though he himself may disagree or have no view on the subject.

Seconds

All ordinary motions must be seconded. Enough time must be given by the chairman but if no one rises to second, the motion is dropped. In routine matters, or where no opposition is expected, the chairman may expedite matters by proceeding without waiting for a second. Often, the chairman may speed affairs by asking members for a second. Some mo-

tions need no second, among them nominations, questions of order, questions of privilege, calling up a motion to reconsider, asking permission to withdraw a previous motion, or requests for information. The seconder may withdraw his second any time up to the moment when the chairman has announced the motion just before taking the vote.

Debate

Debate follows on the duly-seconded motion. All persons should have the opportunity to state their ideas fully, but the chairman is under a duty to keep debate relevant, and to cut off long-winded speakers after they have stated their views. Certain motions and questions are not debatable, which means that the chairman must proceed immediately to a vote or a ruling. Among these are motions to adjourn to a fixed time when privileged, to adjourn, to take a recess when privileged, points of order, appeals relating to conduct of members, to suspend the rules, to divide a motion, to lay on table, to take from table, move the previous question or limit or extend debate, to amend an undebatable motion, to reconsider an undebatable motion, to close nominations. It is worth pointing out here that many responsible authorities in parliamentary law hold that there is no privilege on the part of chairman or members to vote a close of nominations. Chairmen should guard against possible objection by waiting an appreciable time after the last nomination, and by urging members to nominate several times before entertaining a motion to close nominations.

Voting; Cutting Off Debate

After full discussion, the chairman prepares for the vote by restating the motion, and asking the members, "Are you ready to vote?" or "Are you ready for the question?" Some member may indicate that he wishes to continue to speak, in which case the chairman should recognize him and delay the vote. After a debate of considerable length, a member may "move the previous question," which is a privileged motion. No debate on this motion is allowed, and if seconded, the board votes on this motion, which is simply a vote to proceed immediately to a vote on the main issue. If two-thirds of the members present vote to move the previous question, the chairman immediately states the main motion and takes a vote on it, cutting off all further discussion. The chairman must be wary of this moving of the previous question, since members of a pressure group or of one political party may use it in an attempt to silence all opposition and to keep any indication of dissent out of the official record. Members may appeal a ruling of the chairman and a simple majority of the members present may change the ruling. Essentially, any democratic assembly depends on full and free debate, and no member should attempt to "steam-roller" the opposition, both on principle, and because there is always tomorrow, when the sides may be changed.

If a two-thirds vote is not achieved, the debate continues. The vote should always be taken by having the members stand or by having them raise hands, since such vote is extraordinary. Even if the motion to move the previous question receives the required two-thirds vote, a motion to lay on the table is still possible. If a member so moves, no debate is possible, and the chairman must take the vote immediately after the second. If a majority present vote to lay on the table, the whole issue is put aside for that meeting. If taken back off the table by motion to take off the table, second, and favorable vote at a later meeting, the chairman must take the vote on the previous question immediately, since this motion is still pending. If this is the case, no debate is possible until the issue of moving the previous question is resolved.

Before calling for the vote on the main issue, the chairman should again state the proposition to be voted upon clearly so that no member may say later that he did not hear or understand the question. He should then call for the vote, which is generally either a voice vote, ayes and nays, or a vote by show of hands. On all ordinances and other matters of permanent record, the clerk must show in his records how each member voted, so a show of hands or a polling of the members is desirable. Naturally, after the vote is taken, the supervisor or temporary chairman should state clearly the final vote on the issue.

Motion to Send to Committee, to Recommit, and to Postpone

Only a few other motions are suited to the use of board members. The motion to send to committee, called often a motion to refer, or to commit, will come in for rather frequent use. Where a motion is made on the floor, the chairman may often refer it directly to the proper committee for consideration, and this is the usual way to handle most matters. Otherwise, where the motion is made, and the members present lack information and are merely "wallowing around," making no progress, it is well for a member to move that the matter be referred to committee for investigation and clarification of all points involved. In the committee reports of the following meeting, the chairman of the committee is expected to report the matter back to the floor, with the required information, and the recommendation of the committee. If the committee has not been able to finish the job on the matter under investigation, the chairman should mention the fact that the issue is still being considered by his committee in his report.

In a similar fashion, if the issue is brought out of committee and subjected to discussion on the floor, and this discussion shows that further information is needed, a member may move to send back to committee or to recommit. A motion may also be made to postpone all consideration of the matter indefinitely, or to postpone it to a definite time, as for instance, the next meeting. The first motion is not likely to receive much use in town-

ship board meeting, but the second serves the definite purpose of allowing members to think the issue over, talk informally among themselves and with other townspeople or with experts, and so on. The chairman must see to it that the issue so postponed is raised at the proper time. Such postponed issues are generally taken up immediately after the end of committee reports, before the beginning of the consideration of new business.

Motion to Amend

Any member may move to alter, add to, or otherwise change a main motion in process of being discussed on the floor. The motion to amend must be seconded, and debate is allowed. If a majority of those voting on the issue approve of the amendment, the main motion is so changed, and debate then continues on the main issue as altered. Amendments may be made to other motions as well, as for instance to a motion to postpone to a certain time. Even if the main motion requires a two-thirds vote, an amendment never needs more than a simple majority to be approved. Any number of amendments may be made, and it is even possible to amend an amendment, but an amendment to an amendment may not be amended any further. Such amendment to an amendment is voted on first, then the amendment to the main motion. It is not possible to postpone motions for amendments or to lay them on the table, but it is possible to end debate on a proposed amendment by moving the previous question.

Motion to Make a Point of Order

If a member of the board thinks that the chairman is carrying on the business of the meeting in an improper fashion, he may move a point of order. This motion is privileged, and his question must be considered and answered immediately. Likewise, if the member does not quite understand what is going on, or if he honestly wishes to ask a question about the procedure, he may move a point of order in the same way. It is wise for a town board to have a copy of Roberts' *Rules* on hand, and any other book on parliamentary law which may be helpful. If one of the members is particularly well-trained or skilled in parliamentary law, or if one of the citizens is willing to contribute his time and attend meetings, the board may consider him as its "parliamentarian," and refer all difficult questions to him for an answer. As a practical matter, however, the supervisor is usually more than able to keep things running smoothly at meetings.

Motion to Divide a Motion

Though there are many motions possible in parliamentary tactics, the motion to divide a motion is about the only other one for which a board member may find use. It occasionally happens that a member will introduce a motion, resolution, or proposed ordinance which contains two or more different ideas, one of which a member may be in favor of, and an-

other or others which he may dislike. Usually, as a matter of courtesy, a motion will be divided at the request of a member, but if necessary, he may move for the division in a formal motion requiring a second. No debate is allowed, and members proceed to vote immediately on whether the split should be made.

Comment

As stated above, it will not serve the purposes of the township at all for a member of the board to attempt to confuse and mislead the meeting by devious parliamentary tactics. It is to the best interests of all that the business of the meeting should be carried forward in an orderly and business-like fashion. While the member should attempt to gain some knowledge of parliamentary procedure so that matters may be handled in a regular fashion, the best guide is consideration and common sense. Parliamentary trickery has no place in a township board meeting.

Footnotes

1. Albert Keiser, *Parliamentary Law for Students* (Ann Arbor, Michigan: Edwards Bros., 1941).

A TABLE OF MOTIONS WHICH MAY BE USED AT BOARD MEETINGS

<i>Main Motion</i>	<i>Debatable?</i>	<i>2nd Required?</i>	<i>Amendable?</i>	<i>Vote Required?</i>
To make a main motion	yes	yes	yes	maj.
<i>Privileged Motions</i>				
Question of privilege	yes	no	yes	maj.
To adjourn to time certain	no	yes	yes	maj.
To adjourn to an indefinite time	no	yes	no	maj.
To recess	no	yes	yes	maj.
<i>Incidental Motions</i>				
To appeal ruling of the chair	no	yes	no	maj.
Point of order	no	no	no	maj.
To object to consideration of a matter	no	no	no	$\frac{2}{3}$
To divide the motion	no	yes	yes	maj.
To withdraw the motion	no	no	no	maj.
To nominate	yes	no	no	maj.
To close nominations	no	yes	yes	$\frac{2}{3}$
<i>Subsidiary Motions</i>				
To lay on the table	no	yes	no	maj.
To take off the table	no	yes	no	maj.
To postpone to a time certain	yes	yes	yes	maj.
To postpone indefinitely	yes	yes	no	maj.
To refer to committee or to recommit	yes	yes	yes	maj.
To amend	yes	yes	yes	maj.
To amend an amendment	yes	yes	yes	maj.
To move previous question (end debate)	no	yes	no	maj.
<i>Miscellaneous Motions</i>				
To reconsider a previous vote	no	yes	no	maj.
To limit or extend time of debate	no	yes	yes	$\frac{2}{3}$

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